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# **1980 Annual Report to The President and The Congress**

**On the activities of  
The Rehabilitation Act  
Interagency Coordinating Council**

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Office of the Attorney General  
Washington, D. C. 20530

December 9, 1980

Memorandum to: The President

From : Benjamin R. Civiletti  
Attorney General *Benjamin R. Civiletti*

Subject : 1980 Report of the  
Interagency Coordinating  
Council

I am writing to you in my capacity as Chairman of the Rehabilitation Act Interagency Coordinating Council to provide you with the Council's second annual report on its activities.

Section 120 of the Rehabilitation, Comprehensive Services and Developmental Disability Act of 1978 (29 U.S.C.A. § 794(c) (1979 Supp.), Pub. L. 95-602)) established the Council to coordinate and facilitate the effective Federal implementation of the affirmative action and nondiscrimination provisions of Title V of the Rehabilitation Act which generally prohibit discrimination on the basis of handicap in Federal employment, Federal contracts and other Federally conducted or assisted programs and activities.

The Council is required by statute to report to the President and Congress each year on its activities "together with such recommendations for legislative or administrative changes as it concludes are desirable..." The Council held its organizational meeting on August 9, 1979 and since that initial meeting has held fourteen meetings to resolve substantive and procedural issues arising under Title V. The report covers those issues considered by the Council from its inception through June 30, 1980.

I believe the attached report shows that the Council has faithfully discharged its statutory responsibilities during the first year of its operation and shows promise of achieving the underlying goals of the statute which established it.

Copies of the attached report have been sent to the Speaker and the Vice President as well as to the relevant Senate and House Committee Chairmen and ranking minority members.



1980 ANNUAL REPORT TO THE PRESIDENT AND  
THE CONGRESS ON THE ACTIVITIES OF THE  
INTERAGENCY COORDINATING COUNCIL



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INTRODUCTION

The Interagency Coordinating Council was established under the Rehabilitation, Comprehensive Services, and Developmental Disability Act of 1978 (Pub. L. 95-602, § 120(a); 29 U.S.C.A. 794c (1979 Supp.)) and is required to report to the President and Congress each year on its activities "together with such recommendations for legislative or administrative changes as it concludes are desirable...."

The Council's function is to:

maximize effort, promote efficiency, and eliminate conflict, competition, duplication, and inconsistencies among the operations, functions, and jurisdictions of the various departments, agencies, and branches of the Federal Government responsible for the implementation and enforcement of [Title V of the Rehabilitation Act of 1973, as amended].

Title V of the Rehabilitation Act contains the civil rights provisions of the Act protecting the interests of handicapped persons. Section 501 of Title V provides for affirmative action in the Federal employment of handicapped persons. The Equal Employment Opportunity Commission has direct authority to enforce the requirements of section 501 by virtue of section 4 of the President's Reorganization Plan No. 1 of 1978 (5 U.S.C.A. App. II, 142 (1979 Supp.)).



Section 502 provides for the establishment of the Architectural and Transportation Barriers Compliance Board (ATBCB) composed of 11 public members and 10 Federal department and agency heads, charged with the enforcement of the Architectural Barriers Act of 1968, as amended (29 U.S.C.A. 792). That Act requires that -- after the effective date of the Act (August 12, 1968) -- Federally owned, occupied or financed buildings and facilities must be designed, constructed and altered so that they are accessible to and usable by physically handicapped persons (42 U.S.C. 4151). The Board's orders are final and binding on Federal agencies, and its orders against non-Federal entities may include the withholding or suspension of Federal funds with respect to any building found to be in noncompliance. The 1978 Rehabilitation Act Amendments authorize the Board to enforce its orders in Federal courts and to represent itself in the courts (excepting Supreme Court appearances).

Section 503 provides for affirmative action in the employment of handicapped persons by Federal contractors having Federal contracts in excess of \$2,500. Section 503 is enforced by the Department of Labor which is also charged under Executive Order 11758, section 2 (39 FR 2075, January 17, 1974) with the responsibility (in consultation with the Department of Defense and the General Services Administration) to issue 503 implementing regulations.

Section 504 originally prohibited discrimination on the basis of handicap in programs and activities receiving Federal financial assistance. The Rehabilitation Act

Amendments of 1978 expanded the coverage of section 504 to prohibit discrimination "under any program or activity conducted by any Executive agency or by the United States Postal Service" and required the head of each agency to publish regulations (Pub. L. 95-602, section 119; 29 U.S.C.A. 794 (1979 Supp.)). The Department of Health, Education and Welfare, under Executive Order 11914 (41 FR 17871, April 28, 1976; 45 CFR Pt. 85, Appendix A, p. 399 (1979)), had lead-agency responsibility to coordinate the implementation of section 504 by the Federal grant agencies with respect to Federally assisted programs. The division of HEW in May 1980 into the Department of Health and Human Services and the Department of Education under the Department of Education Organization Act (Pub. L. No. 96-88, 93 Stat. 688 (1979)), left HHS with the coordination function under 504 for Federally assisted programs. That function was transferred to the Department of Justice by virtue of Executive Order 12250, signed November 2, 1980 (45 F.R. 72995). Additionally, the Executive Order provides the Department of Justice with the lead agency responsibility to coordinate implementation of 504 for Federally conducted programs. Previously, no Federal agency exercised 504 coordination authority over Federally conducted programs.

The membership of the Council consists of the heads of the Department of Health and Human Resources, Labor, Education, and Justice, the Office of Personnel Management, the Equal Employment Opportunity Commission and the Architectural and Transportation Compliance Barriers Board. At

the request of James T. McIntyre, Jr., Director of the Office of Management and Budget, Attorney General Bell agreed in August 1979 to serve as the Council's first Chairman and appointed the Assistant Attorney General for Civil Rights, Drew S. Days III, as his representative who also acts as Chairman Designee of the Council. The other participating designees of the Council are: Sylvia Drew Ivie, the Director of the Office for Civil Rights, HHS; Donald Elisburg, Assistant Secretary for Employment Standards Administration, DOL; Commissioner Armando Rodriguez, EEOC; Jule M. Sugarman, Deputy Director, OPM; Cynthia Brown, Assistant Secretary for Civil Rights, D.O. Ed.; and Guy McMichael, General Counsel of the VA representing the ATBCB Chairman, Max Cleland. The Council held its organizational meeting in August 1979 and has held fourteen meetings since that time. During this period the Council considered the following issues and took the following action.

#### AGENDA ISSUES

- Issue 1. Consistency in the requirements of sections 503 (Federal contracts) and 504 (Federal financial assistance) and their implementation.

Employers can be both Federal contractors and grantees and thereby subject to both sections 503 and 504 of the Rehabilitation Act with respect to employment practices. It is the Council's view that employers should not be subject to conflicting responsibilities under these provisions.



This view is consistent with Executive Order 11914. Section 5 of the Order directs HEW to promulgate section 504 regulations which are "not inconsistent with, or duplicative of other Federal Government policies adopted in accordance with Sections 501, 502 and 503 of the Rehabilitation Act of 1973...." However, HEW's 504 regulation and Federal agency guidelines, requiring that medical examinations can only be given by recipients after a conditional offer of employment (45 CFR 84.14(a), 85.55)), conflict with DOL's 503 regulation which does not limit the timing of the medical exam (41 CFR 60-741.6(c)(3)). HEW's view was that its approach to medical exams would serve to reduce discriminatory employment practices against handicapped persons because it makes it possible to determine whether the reason for not hiring a handicapped person is because of handicap. All of the Federal agencies which have final or proposed 504 regulations have followed the HEW guideline on medical exams with the exception of DOL. On January 4, 1980 DOL published its proposed 504 regulation (with HEW concurrence) which permits preemployment medical exams with certain safeguards not now provided in DOL's 503 regulation and included several other departures from the HEW 504 guidelines. HEW agreed to withhold a final determination until it had reviewed the public comments to see whether the DOL proposals constituted an appropriate balancing of business needs with the interests of handicapped persons.

During the comment period, EEOC submitted comments to DOL which essentially disapproved the proposed DOL

departures from the HEW standards. EEOC takes the position that the DOL 504 regulations pertaining to employment must be approved not only by HEW (now the Department of Health and Human Services) but also by EEOC under its Executive Order 12067 authority (see Issue 4, infra, pp. 17-19). In the event the parties failed to reach agreement, the Council agreed to recommend a resolution of the issues.

On July 8, 1980 Assistant Secretary Elisburg of DOL, Chair Norton of EEOC and Assistant Attorney General Days, in his capacity as Chairman Designee of the Council, resolved the outstanding disputed issues. Final approval on the DOL 504 regulations was received from the Department of Health and Human Services, and the regulations were published in the Federal Register on October 7, 1980 (45 F.R. 66706).

DOL now intends to amend its 503 regulations, where appropriate, to achieve consistency with its 504 regulations.

Agenda for closure. The Council will continue to monitor the progress of DOL's amendment of its 503 regulations.

Issue 2. Overlap of enforcement responsibilities of the Architectural and Transportation Barriers Compliance Board under section 502 of the Rehabilitation Act and the Federal grant agencies under section 504 of the Act.

As noted above, the ATBCB is principally involved with the enforcement of the Architectural Barriers Act.

Further, as a result of the Rehabilitation, Comprehensive Services and Developmental Disabilities Act of 1978 (Rehabilitation Act Amendments), section 502(b)(7) of the Rehabilitation Act directs the Board to establish minimum guidelines and requirements for standards issued by four other Federal agencies (Department of Defense, United States Postal Service, Department of Housing and Urban Development, General Services Administration) under the Architectural Barriers Act which provides that certain categories of Federal or Federally funded buildings and facilities are accessible to physically handicapped persons.

The uniform Federal agency 504 regulations require full program accessibility for program beneficiaries. As to existing buildings and facilities used in a Federally assisted program, structural modifications are required under 504 regulations in the absence of feasible alternatives (e.g., relocation of the program to an accessible site). As to new construction (i.e., construction begun after the effective date of the relevant Federal agency's 504 regulation) buildings and facilities used in federally assisted programs must be barrier free. Until now, adherence to the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A117.1-1961 (R1971)), or some standard which provides equivalent access, constituted 504 compliance. See, e.g., 45 CFR 84.21-84.23.



Grantees of Federal assistance may be subject to the jurisdiction of the Board under section 502 by their use of Federal construction assistance and also be subject under section 504 to the jurisdiction of the Federal grant agency which either (1) provided construction funds for the facility in question, or (2) provided Federal assistance to programs conducted in the Federally funded structure. Accordingly, the enforcement and guideline setting responsibilities of the Board under section 502 overlap with the corresponding responsibilities of the Federal grant agencies under section 504. The jurisdictional overlap problems were compounded by the evident disagreement between the Board staff and HEW's Office for Civil Rights and Office of the General Counsel on the reach of the Board's jurisdiction under the Architectural Barriers Act. After the dissolution of HEW, HHS adhered to the HEW position.

At the request of the Council, HEW and the Board staff submitted their respective legal positions on the reach of the Board's jurisdiction under the Architectural Barriers Act, to the Department of Justice' Office of Legal Counsel (OLC) for a final resolution. The two questions put to OLC by HEW and the Board were: (1) whether the Act extends to buildings leased by a recipient of a Federal grant or loan where the recipient uses the funds to make rental payments, and (2) whether the Act covers only those buildings for which standards for design, construction, or

alteration actually have been imposed, either by statute or by regulation. OLC concluded (Appendix 1) that the Act does not extend to buildings leased by recipients of Federal grants or loans where the funds were not made available for building construction or alteration, but that the Act does cover those buildings for which standards are authorized, even if they have not actually been imposed.

With respect to overlapping jurisdiction under 502 and 504, the Council asked Jule Sugarman to chair a subcommittee of Council members to resolve this issue. As a result, HEW and the ATBCB formulated and approved a draft memorandum of understanding resolving the problem of jurisdictional overlap. (Appendix 2). The memorandum was submitted by Mr. Sugarman to the Council for its approval, which was granted. It is expected that the Department of Education will be a signatory to a similar memorandum of understanding with the Board.

Agenda for closure. Execution of comprehensive memoranda of understandings between HHS, D.O. Ed. and ATBCB by December 1980.

Issue 2a. ANSI Standards.

The Council has discussed the Federal response to the new "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, Physically Handicapped People" (ANSI A117.1-1980) published in May 1980. This new standard is the product of a five

year development and review process involving Federal agencies, organizations representing the interests of handicapped persons, architectural and engineering groups, and business interests. HUD funded the revision of the ANSI Standard with approximately \$500,000 and participated as one of three steering committee members. The other two were the National Easter Seal Society for Crippled Children and Adults and the President's Committee on Employment of the Handicapped.

Of the fifty-five organizations and individuals participating in the development of the new ANSI Standard, four registered a negative vote on the final ballot -- all Federal agencies: HEW, ATBCB, GSA and the Bureau of National Standards. PCEH, HUD, DOA, DOT, VA and the Army Corps of Engineers voted approval of the new Standard.

The new ANSI Standard is a matter of interest to the Council for several reasons. By virtue of Executive Order 11914, HEW recommended that Federal grant agencies provide in their 504 regulations that design, construction, or alteration of facilities conform to ANSI A117.1-1961 (R 1971) (the then current existing ANSI Standard on accessibility published in 1961 and revised in 1971) or some alternative standard which would clearly provide equivalent access. Accordingly, the Department of Justice, as the new 504 lead-agency, is now faced with the decision whether to endorse the new ANSI Standard for the 504 agencies or use some alternative guidelines. (While HEW's Office of Facilities Engineering voted against the new ANSI Standard in the



final ballot, HEW's Office for Civil Rights was favorably disposed toward the new Standard). Second, to the extent that 504 agencies and ATBCB adopt different standards, the potential for conflict is present due to their overlapping responsibilities under Title V of the Rehabilitation Act.

The Board declined to endorse the new ANSI Standard and approved the publication of an advanced notice of proposed rulemaking (ANPRM) 45 FR 12168 (February 22, 1980) and notice of proposed rulemaking 45 FR 55010 (August 18, 1980) to implement the Board's authority under section 502 of the Rehabilitation Act to establish minimum guidelines and requirements for the standards issued by the four design standard-setting agencies under the Architectural Barriers Act. Further, GSA on February 6, 1980 published a new accessibility standard as proposed rulemaking under the ABA (45 FR 8028) for nonresidential buildings. At the same time, HUD seems committed to adopting the new ANSI Standard for its 504 regulation and its ABA standard.

All of these design standards may ultimately prove to be compatible, but the Council believes it appropriate to have the Federal Government support a unitary standard which would achieve widespread public and industry support and would avoid the confusion and inefficiency resulting from a proliferation of standards. Beyond these practical problems, is the policy relevance of OMB Circular A-119 (January 17, 1980) which provides that it is Federal policy to "rely on voluntary standards... with respect to Federal procurement, whenever feasible and consistent with

law and regulation pursuant to law." The rationale of that Circular would appear to apply equally to grant programs.

The President's Committee on Employment of the Handicapped and the four design standard-setting agencies had representatives at the Council's March 13 meeting to discuss this issue. As a result, the Council agreed to defer further action on the basis of the Board's commitment to publish a proposed rule by July 1980 and a final rule by December 1980. It was agreed that the proposed rule would identify all modifications in the new ANSI Standard which the Board believed were necessary. It was further agreed that the Federal agencies which have no functional construction standard (e.g., the 504 grant agencies) should adopt the Board's proposed rulemaking as an interim standard while those having a fully developed standard would have the option to adopt either the Board's proposed rule as an interim standard or adhere to their present standards.

Agenda for closure. It is the Council's continuing belief that (1) all Federal agencies should adhere to the same accessibility standard where feasible, and (2) that whatever standard is ultimately adopted by the Federal agencies should have broad public and industry support. It remains to be tested whether the Board's final rule will be the appropriate standard for meeting these two criteria. The Council will receive progress reports from the Board's staff during the rulemaking process. Further, Federal agencies will be encouraged by the Council to participate in this process so that the final rule

will emerge as a consensus document which all Federal agencies can adopt. Where problems develop which threaten a consensus, the Council will seek to resolve such problems and, where appropriate, will seek the assistance of OMB and the Domestic Policy Staff.

Issue 3. The absence of a lead Federal agency to coordinate section 504's application to the Executive Branch (CLOSED)

The Rehabilitation Act Amendments of 1978 enlarged the coverage of section 504 to include prohibition of discrimination "under any program or activity conducted by any Executive agency or by the United States Postal Service and required the head of each agency to publish regulations (Pub. L. 95-602, section 119; 29 U.S.C.A. 794 (1979 Supp.)). To date no Federal agency has published such regulations, and there is little legislative history which assists in determining the reach of this amendment and how it relates to other Title V provisions. Until recently no Federal agency had authority to coordinate the implementation of the amendment to Section 504. Executive Order 11914 by its language granted HEW coordination authority under 504 only to Federal assistance programs.

The passage of the Education Organization Act (Pub. L. No. 96-88, 93 Stat. 688 (1979)) in November complicated a resolution of this issue, for it raised the question whether D.O. Ed. should be vested with HEW's E.O. 11914 coordination function because the Act transferred to D.O.

Ed. all functions of the Secretary of HEW under the Rehabilitation Act, including those functions relating to Title V of the Rehabilitation Act such as government-wide 504 technical and financial assistance functions under section 506 of the Rehabilitation Act and HEW's membership on the ATBCB. Moreover, D.O. Ed. now houses the three major programs serving handicapped persons--education for all handicapped persons, vocational education for handicapped persons, and vocational rehabilitation -- and the 504 coordinating authority was premised, in part, on HEW's unique expertise derived from such programs.

At its December 13, 1979 meeting the Council agreed that one agency should coordinate section 504's application to both Federally-assisted programs and Federally-conducted programs, in the interest of consistency and efficiency. Based on HEW's own analysis, it further appeared to the Council that D.O. Ed. would fall heir to HEW's coordination function under E.O. 11914 for Federally-assisted programs and should, in that event, also coordinate 504's application to Federally-conducted programs.

The Council notified Secretary Hufstedler by memorandum of December 28, 1979 of the Council's views and stressed the urgency of resolving the matter. Secretary Hufstedler responded on March 21, 1980 and agreed to accept the existing E.O. 11914 coordination authority but deferred accepting the 504 coordination of Federal programs pending a legal determination of 504's application

to the Executive Branch agencies, a study of the coordination responsibilities in applying 504 to the Federal agencies, and a commitment from OMB to assign to D.O. Ed. the requisite resources to effectively implement this function.

On March 24, 1980 Senator Cranston wrote to the President (Appendix 3) and urged the President to assign the 504 coordination authority to the Department of Justice. The Council considered the Senator's proposal and agreed with the Senator's recommendation, subject to the Attorney General's approval. The Attorney General approved the transfer and the Office of Domestic Policy was notified. On May 1 the President, in a speech to the annual meeting of the President's Committee on Employment of the Handicapped, announced the preparation of an Executive Order to transfer 504 coordination authority to the Department of Justice. On November 2, 1980 the President signed Executive Order 12250 (Appendix 3a) which, among other things, assigns the 504 coordination function to the Department of Justice.

Issue 4. The application of Executive Order 12067 to the legal responsibilities of DOL and the 504 lead-agency under sections 503 and 504 of the Rehabilitation Act.  
(CLOSED)

Executive Order 12067 (43 FR 28967, June 30, 1978) charges EEOC with the responsibility to coordinate Federal law promoting equal employment opportunities, including opportunities for handicapped persons. Section 1-304 of the



Order requires Federal agencies to submit "proposed rules, regulations, policies, procedures and orders concerning equal employment opportunity" to EEOC for review "to ensure consistency among the operations of the various Federal departments and agencies." The language of the Executive Order inferentially includes EEOC's coordination of Title V of the Rehabilitation Act to the extent that Title V covers employment. (As noted above, EEOC has direct authority to enforce 501 of the Act). Accordingly, it appears that DOL and the Federal grant agencies fall within the coverage of the Executive Order as to their responsibilities to enforce sections 503 and 504 of the Act. The question addressed by the Council was whether DOL's and HEW's leadership roles under 503 and 504, under Executive Orders 11758 and 11914 respectively, were effectively modified despite section 1-501 of E.O. 12067 which provides that "nothing in this order shall relieve or lessen the responsibilities or obligations imposed upon any person or entity by Federal equal employment law, Executive Order, regulation or policy."

HEW and DOL took the position that insofar as standards or practices applied solely to sections 503 and 504, those agencies had primacy. Where, however, section 503 or 504 handicap discrimination policies required coordination with other employment policies under other statutes, EEOC had a primary role. EEOC disagreed and contended that its E.O. 12067 authority extended to all Federal statutes,

regulations and policies effecting equal employment opportunity and affirmative action for handicapped persons. Thus far these differences of view have not resulted in widespread practical problems of coordination, primarily because EEOC has used HEW's E.O. 11914 guidelines to Federal agencies (43 FR 2132, Jan. 13, 1978; 45 CFR §85.1 et seq.) as its standard for review of proposed agency regulations. The potential for conflict between EEOC and the 504 lead-agency is, nonetheless, present and some may question whether the public is well served by requiring grant agencies to have their 504 regulations, guidelines and policies regarding employment approved by both the Department of Justice, as the 504 lead-agency, and EEOC.

Agenda for closure. At the Council's request the EEOC submitted a position paper detailing several options for avoiding potential conflicts while ensuring effective implementation of the agencies respective responsibilities. After considering these options, the Council adopted the option which provides that EEOC review only proposed 504 issuances while the 504 lead agency reviews final issuances. It is anticipated that a memorandum of understanding formalizing this recommendation will be entered into by the appropriate agencies.

Issue 5. The appointment of the public members to the ATBCB. (CLOSED)

On October 24, 1979, at the request of the Council, the Attorney General sent a memorandum to the President

urging prompt action on the appointment of the public members to the Council. The recommendation was included in the annual report the Council is required to send to the President and Congress on its activities. (Appendix 4). On December 4, 1979 the President announced the appointment of the 11 public members of the Board.

Issue 6. Senator Cranston's letter to the President of August 17, 1979 (CLOSED)

Senator Cranston wrote the President to request that the President direct the Council to prepare a Presidential statement to provide public assurance that Title V would be vigorously enforced. The Senator's request was based on his concern that the Supreme Court's ruling in Southeastern Community College v. Davis, 442 U.S. 397 (1979) might serve to erode compliance with, and enforcement of, Title V in the absence of such a Presidential communication. The Council wrote to Stuart E. Eizenstat on December 28, 1979 and advised that the Council endorsed in principle the efficacy of a Presidential statement and attached draft language for such a statement. Mr. Eizenstat responded to the Council on February 5, 1980 and said that the Council's draft statement would be useful for a future Presidential communication on handicapped persons.

In the Council's view, the President's May 1, 1980 speech to the President's Committee on Employment for the Handicapped (Appendix 5) constitutes a major statement on the Administration's commitment, record and future

initiatives on behalf of handicapped persons and, accordingly, meets the concerns expressed by Senator Cranston in his letter to the President.

Issue 7. The Comptroller General's decision that agencies may not authorize reimbursement of compensation for attendants of handicapped employees on official business.  
(CLOSED)

At the direction of the Council, the Office of Personnel Management prepared draft legislation to authorize the employment of personal assistants for handicapped Federal employees. (H.R. 7466 introduced May 29, 1980) (Appendix 6). The need for the legislation arose, in part, from the Comptroller's decision that Federal agencies may not compensate attendants of handicapped employees whose services are required when the employee is participating in official training outside the locality of the employee's regular duty station.

H.R. 7466 passed both the House and Senate and has been forwarded to the President.

Issue 8. Sheltered workshops.

a. Inequities in Federal Benefits. (CLOSED)

Under Federal law, increased wages in sheltered workshops could apparently lead to a cut-off in supplemental Social Security income that, in turn, could trigger the cut-off of other benefits. Workshop administrators allegedly used this as a justification for low wages thereby holding handicapped employees to artificially low wage scales having no

relationship to the true productivity of workshop employees. Because handicapped persons frequently are in greater need of Social Security income and other Federal benefits (e.g. Medicaid) than nonhandicapped persons with comparable incomes, this problem represented a possible inequity in Federal law. The Council considered the problem which was ultimately addressed by the Social Security Disability Amendments of 1980, Pub. L. 96-265, signed into law on June 9, 1980 which, generally, provide for all eligible handicapped workers a more liberal fund cutoff than had previously been allowed.

b. Conflicts in Federal Law. There is an apparent conflict between DOL's administration of its Fair Labor Standards Act regulation which requires the physical separation of certain categories of workshop employees, and the 504 Federal policy which requires recipients to place handicapped persons who participate in Federally assisted programs in the most integrated setting appropriate to such persons' needs.

DOL's Solicitor has concluded that an FLSA amendment is required to change the current practice.

Agenda for closure. The Council will consider the possibility of legislation to amend the FLSA or other alternatives to resolve the issue. A sub-committee of the Council composed of HHS, D.O.Ed., and DOL, has been formed to consider and recommend options for resolution to the Council.

Issue 9. Staffing needs of ATBCB.

At the request of OMB, the Council considered the serious understaffing of the ATBCB at its December 13, 1979 meeting. At that time the Council noted that the Board had more governing members (21) than authorized staff (18). Given the importance of the Board's program and its obvious inability to carry out its numerous statutory responsibilities at the then current staffing level, the Council agreed to ask OMB for appropriate relief. The fiscal recommendations of the Council were based on a recently completed analysis prepared by HEW's Office of Human Development Services which fully justified the Council's request to OMB for an FY '81 appropriation of \$3 million dollars, as authorized under the Rehabilitation Act Amendments of 1978 (29 U.S.C.A. 792(i) (1979 Supp.)) and the levying upon the Board's member agencies for the loan of slots for the remainder of FY '80. For the past three fiscal years, the funding for the Board has been essentially flat -- \$1 million dollars -- and HEW had proposed no increase in that funding level for FY '81.

Discontinuing HEW's budget-setting role for the ATBCB comprised the second recommendation to OMB. The Council recommended that for future fiscal years the Board should be authorized by OMB to submit a separate budget. The Board, although an independent agency, was housed at HEW and is now housed in the Department of Education, and its budget submissions were traditionally reviewed by HEW and became a part of the HEW budget request.



Given the Board's enforcement role under section 502 of the Rehabilitation Act, the Council believed the budgetary clearance procedure resulted in an awkward dependency for the Board and constituted a potential conflict of interest for HEW.

The Council wrote to Director McIntyre on December 28, 1979 (Appendix 7) in response to an OMB request to evaluate staffing needs of the ATBCB, setting out its recommendations on funding and the independence of the Board. Thereafter, OMB attached to the President's FY '81 budget request a \$1 million dollar FY '80 supplemental appropriation which provided for 12 new permanent positions for the Board staff. In March 1980 the supplemental request was reduced to \$605,000 in the President's revised budget without, however, affecting the request for 12 new positions. For FY '81, the revised budget requests \$2.3 million and sets the staff ceiling at 32. The proposed FY '81 budget for the ATBCB appears as a line item in the D.O. Ed. request.

The Council's view was that the Board should function as a wholly independent agency and that its recent shift, for housekeeping purposes, from HEW to D.O. Ed. should not result in D.O. Ed.'s exercising in the future the same kind of budgetary overview that HEW exercised in the past. A recent GAO Report to Congress ("Making Public Buildings Accessible To The Handicapped: More Can Be Done,"

June 6, 1980) also recommended independence for the Board as well as additional resources (pp. 7-10 of the GAO Report). The question of the Board's independence has been resolved as a result of Director McIntyre's letter of July 21, 1980 to Max Cleland, Chairman of the ATBCB, which authorizes the Board to make a direct submission of its proposed FY '82 budget to OMB (Appendix 8). The Secretary of Education has concurred with the Council's Recommendation regarding the independence of the Board. This issue is now resolved.

As to staffing, the Administration's budget requests do not meet the levels anticipated in the Council's recommendation to Mr. McIntyre although OMB's responsiveness has been most welcome. However, there is an as yet unexplored option that might serve to supplement the budget request. The Rehabilitation Act provides that the Federal agencies represented on the Board "shall make available to the Board such technical, administrative, or other assistance as it may require to carry out its functions...." 29 U.S.C. 792(f). This provision remains dormant. Given the need for a staffing increment not provided for in the FY '80 and '81 budget requests, it may be appropriate for the Administration to adopt the Council recommendation on the loan of Federal agency slots if this is a feasible and legal option.

Issue 10. Data Collection on Participation of Handicapped Individuals in Federal financial assistance programs.

On December 10, 1979, OMB published an interim guideline (44 FR 70942) for Federal agencies regarding the collection of information on the race, ethnic background, age and sex of applicants for benefits under Federal assistance programs. At the request of OMB's Regulatory Policy and Reports Management Division, the Council considered and approved for circulation a proposed OMB revision of the guideline to include data collection on handicapping conditions. The revised guideline has been distributed to appropriate Federal agencies and private organizations for comment and may be published as a proposed guideline.

Agenda for closure. The Council will consider the comments OMB has received regarding the proposed guideline and, thereafter, will make a final recommendation to OMB on Federal data collection on handicapping conditions.

Issue 11. The Cleveland Amendment

The "Cleveland Amendment" is an amendment introduced by Congressman Cleveland to H.R. 6417, the Department of Transportation's transit authorization bill. The amendment would permit any recipient of Urban Mass Transit Act funds for capital or operating expenses to meet its obligations to handicapped persons under section 16 of

that Act and section 504 of the Rehabilitation Act by spending a limited percentage of the funds on a separate transit program for handicapped persons. Although the program would have to meet certain service standards, these standards and the percentage requirement do not mandate a program that would be truly comparable to the systems provided to non-handicapped persons. Moreover, the Council believes permitting such separate programs would violate the "mainstreaming" approach taken by DOT and HEW under section 504. That approach prohibits unnecessary separate services for handicapped persons. The Amendment also would allow pre-1970 fixed rail systems, (e.g., subways) to make major modifications to stations or construct new stations as extensions without providing accessibility for handicapped persons. In the Council's view this provision is clearly contrary to both the letter and spirit of the Architectural Barriers Act and section 504 of the Rehabilitation Act, as amended.

The Council wrote to Mr. Eizenstat on June 23, 1980 to express that view and followed-up with letters to appropriate members of the House and Senate essentially repeating its message of opposition to the Cleveland Amendment (Appendix 9).

Agenda for closure. The Council will monitor the progress of the Cleveland Amendment in the House.

Issue 12. International Year for Disabled  
Persons

In 1976 the General Assembly of the United Nations proclaimed 1981 as the "International Year of Disabled Persons" (IYDP) with the following objectives:

- help disabled persons in their physical and psychological adjustment to society;

- promote all national and international efforts to provide disabled persons with proper assistance, training, care and guidance, to make available opportunities for suitable work and to ensure their full integration in society;

- encourage study and research projects designed to facilitate the practical participation of disabled persons in daily life, for example, by improving their access to public buildings and transportation systems;

- educate and inform the public of the rights of disabled persons to participate in and contribute to various aspects of economic, social and political life; and

- promote effective measures for the prevention of disability and for the rehabilitation of disabled persons.

The United States is one of a 23 member advisory committee to oversee the UN program. Participation of non-government organizations in the program in the United States is being spearheaded by the U.S. Council for the International Year of Disabled Persons, a private group chaired by David T. Kearns, the President of the Xerox Corporation. The Council has received both Federal and private funding. Federal participation in the IYDP is being coordinated by the Federal Interagency Committee for the IYDP. The Interagency Committee is being co-chaired by representatives of HHS, D.O. Ed. and the State Department. However, the Committee has received no funding and operates with only one permanent staff member. Accordingly, little has been accomplished. After receiving a report for the co-chairmen of the Interagency Committee at the Council's July 10 meeting, the Council wrote to Mr. Eizenstat to express concern that, unless adequate funding and staffing were afforded the Committee, Federal participation in the IYDP would be meaningless (Attachment 10).

Agenda for closure. The Council will monitor the progress of the Interagency Committee and will determine what, if any, further useful assistance it might be to the Committee.

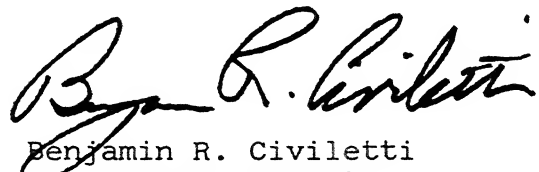
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In addition to the above matters, the Council wrote to Senator Harrison A. Williams, Jr., Chairman of the Senate Committee on Labor and Human Resources on September 24, 1979 in support of S.446 which would amend Title VII of the Civil Rights Act of 1964 to prohibit discrimination against handicapped persons to the same extent Title VII protections are now accorded to minorities and women (Appendix 11). Further, on June 11, 1980 the Chairman Designee of the Council testified before the House Subcommittee on Select Education of the Committee on Education and Labor regarding the operations of the Interagency Coordinating Council as they impact on the operations of the Architectural and Transportation Barriers Compliance Board (Appendix 12).

Respectfully submitted,

Dated:

12/9/80

  
Benjamin R. Civiletti  
Attorney General



APPENDIX 1



Department of Justice  
Washington, D.C. 20530

8 MAY 1980

Memorandum for Drew S. Days, III  
Assistant Attorney General  
Civil Rights Division

Re: Architectural Barriers Act  
§ 1, 42 U.S.C. 4151

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This responds to your memorandum of March 27, 1980, requesting this Office to resolve questions that have arisen concerning the scope of the Architectural Barriers Act of 1968 (Act), § 1, 42 U.S.C. 4151. Attached to your memorandum were memoranda of the General Counsel of the Department of Health, Education and Welfare (HEW) and the General Counsel of the Architectural and Transportation Barriers Compliance Board (ATBCB), presenting their respective positions. As set forth in the cover letters attached to their memoranda, the questions on which HEW and ATBCB have agreed to request our opinion are: (1) whether the Act extends to buildings leased by a recipient of a federal grant or loan where the recipient uses the federal funds to make rental payments, and (2) whether the Act covers only those buildings for which standards for design, construction, or alteration actually have been imposed, either by statute or by regulation. For the reasons set forth below, we conclude that the Act covers those buildings for which standards are authorized, even if they have not actually been imposed, but that the Act does not extend to buildings leased by recipients of federal grants or loans where the funds were not made available for building construction or alteration.

Before considering the particular statute in question, it is necessary briefly to review the history and purpose of the Act, and subsequent legislative developments. <sup>1/</sup> Enacted in 1968, the Act was designed to insure that all buildings "constructed in the future by or on behalf of the Federal Government or with loans or grants from the Federal Government are designed and constructed in such a way that they will be accessible to and usable by the physically handicapped." S. Rep. No. 538, 90th Cong., 1st Sess 2 (1967). In § 2, it

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<sup>1/</sup> For an analysis of the legislative history of the Act and its implementation, see Minority Staff of Senate Comm. on Environment and Public Works, 96th Cong., 1st Sess., Architectural Barriers In Federal Buildings (Comm. Print 1979).

authorized the Administrator of General Services, in consultation with the Secretary of HEW, to prescribe such standards for the design, construction, and alteration of buildings as may be necessary to insure that physically handicapped persons will have ready access to, and use of, such buildings. 2/ After the effective date of a standard issued under the Act, every building subject to the Act was required to be designed, constructed, or altered in accordance with such standard. 3/ For purposes of the Act, the word "building" was defined as follows:

[T]he term "building" means any building or facility . . . the intended use for which either will require that such building or facility be accessible to the public, or may result in the employment or residence therein of physically handicapped persons, which building or facility is --

(1) to be constructed or altered by or on behalf of the United States;

(2) to be leased in whole or in part by the United States after the date of enactment of this Act after construction or alteration in accordance with plans and specifications of the United States; or

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2/ 82 Stat. 719 (1968). There were to exceptions to § 2. For residential structures subject to the Act, the Secretary of Housing and Urban Development was authorized to prescribe standards. See Architectural Barriers Act, § 3, 82 Stat. 719 (1968)(current version at 42 U.S.C. 4153). For facilities of the Department of Defense subject to the Act, the Secretary of Defense was authorized to prescribe standards. Id., at § 4, 82 Stat. 719 (1968)(current version at 42 U.S.C. 4154). Both officials were directed to consult with the Secretary of HEW.

3/ Architectural Barriers Act, § 5, 82 Stat. 719 (1968)(codified at 42 U.S.C. 4155). The Act did allow exceptions to be made in some circumstances. Id., § 6, 82 Stat. 719 (1968)(current version at 42 U.S.C. 4156).

(3) to be financed in whole or in part by a grant or a loan made by the United States after the date of enactment of this Act if such building or facility is subject to standards for design, construction, or alteration issued under authority of the law authorizing such grant or loan.

Architectural Barriers Act, § 1, 82 Stat. 718 (1968)(current version at 42 U.S.C. 4151).

In 1970, the Act was amended to include the buildings and structures constructed by the Washington Metropolitan Transit Authority. Act of March 5, 1970, 84 Stat. 49 (codified at 42 U.S.C. 4151). Because the Transit Authority is a regional agency formed by compact and not a federal agency, and because its buildings are not subject to regulation for design, construction, or alteration issued under authority of the law authorizing federal funds, the question arose whether it was covered by the Act. S. Rep. No. 658, 91st Cong., 1st Sess. 2 (1970). The amendment was passed to clarify the Act by clearly including the Washington subway system. 4/

As a result of a report by the General Accounting Office, 5/ the Act again was amended in 1976 to "assure more effective implementation of the congressional policy to eliminate architectural barriers to physically handicapped persons in most federally occupied or sponsored buildings." H.R. Rep. No. 1584 - Part I, 94th Cong., 2d Sess. 2 (1976).

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4/ The amendment added subparagraph (4) to the definition of "building" in 42 U.S.C. 4151. As used in the Act, "building" thus included any building or facility "to be constructed under authority of the National Capital Transportation Act of 1960, the National Capital Transportation Act of 1965, or title III of the Washington Metropolitan Area Transit Regulation Compact."

5/ Report of United States Comptroller General, "Further Action Needed to Make All Public Buildings Accessible to the Physically Handicapped" (July 15, 1975).

The amendment changed the law in the following four ways: it included (1) the United States Postal Service; (2) buildings privately owned, but used to provide public or federally subsidized housing; (3) all buildings to be leased in whole or in part by the United States; and (4) it removed some of the discretionary authority of the administrative agencies. See Public Buildings Cooperative Use Act of 1976, § 201, 90 Stat. 2507 (codified at 42 U.S.C. 4151-4156).

Since the passage of the Architectural Barriers Act, other steps have been taken by the Federal Government to eliminate architectural barriers in public buildings. In 1973, Congress passed the Rehabilitation Act, Pub. L. 93-112, 87 Stat. 355, an extensive revision of statutes dealing with vocational rehabilitation. Two of its provisions are relevant to the questions presented here. Section 502 of the Rehabilitation Act established the ATBCB to insure compliance with standards prescribed pursuant to the Architectural Barriers Act. 87 Stat. 391-393 (current version at 29 U.S.C. 792). According to the Senate Labor and Public Welfare Committee, a new federal board was needed "to insure compliance with the present federal statutes regarding architectural barriers since compliance has been very spotty and there is no such comparable compliance unit in existence . . ." S. Rep. No. 318, 93d Cong., 1st Sess. 49 (1973). As amended by subsequent legislation, § 502 now provides that it is the function of the ATBCB to insure compliance with the standards prescribed pursuant to the Architectural Barriers Act, including enforcing all standards under that Act and establishing minimum guidelines and requirements for such standards. 29 U.S.C. 792(b)(1)(7). In carrying out its functions, the Board may issue orders of compliance, including the withholding or suspension of federal funds with respect to any building found not to be in compliance with standards being enforced. 29 U.S.C. 792(d)(1).

Section 504 of the Rehabilitation Act provided that "no otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits

of or be subjected to discrimination under any program or activity receiving Federal financial assistance." 87 Stat. 394 (codified at 29 U.S.C. 794). Executive Order No. 11914, issued in 1976, directs the HEW Secretary to coordinate the implementation of § 504 by all federal departments and agencies empowered to extend financial assistance to any program or activity. Exec. Order No. 11914, 45 C.F.R. Part 85 App. A (1979). The Order also directs the Secretary to establish guidelines for agency standards for determining what are discriminatory practices, and, if voluntary compliance cannot be secured informally, authorizes the suspension or termination of financial assistance. Section 5 of the Executive Order authorizes the Secretary to adopt rules to carry out the Secretary's responsibilities. The rules so adopted require in part that a program recipient's facilities be accessible to handicapped persons. 45 C.F.R. 85.56-85.58. Thus, although the Executive Order requires the Secretary to ensure that HEW regulations are not inconsistent with or duplicative of, other federal policies relating to the handicapped (including the Architectural Barriers Act), HEW and ATBCB do have overlapping jurisdiction as to certain aspects of federal programs and activities. The questions presented here, which arise out of those agencies' conflicting interpretations of the Architectural Barriers Act, do not directly address that overlapping jurisdiction. Resolution of those questions, however, will determine the scope of the Act and, hence, the scope of ATBCB's derivative jurisdiction.

Both of the questions presented here require an interpretation of subparagraph (3) of 42 U.S.C. 4151. That subparagraph provides that the term "building" means any building or facility "to be financed in whole or in part by a grant or a loan made by the United States after August 12, 1968, if such building or facility is subject to standards for design, construction, or alteration issued under authority of the law authorizing such grant or loan." The first question we address is whether the quoted phrase includes buildings leased with federal funds by grant or loan recipients of the Federal Government. To include such buildings, the phrase "financed in whole or in part by a grant or a loan" must be found to include payments of rent to owners of buildings leased by grant or loan recipients. The plain language of the statute as well as its legislative history make clear that the Act does not reach so far.



The conclusion that the term "financing" refers to financing the construction of a building also finds support in the committee reports. In the Senate report, the Committee summary of the bill states that S. 222 will require "that grants or loans made by the Federal Government for the purpose of financing the construction of public buildings be made upon the condition that the design and construction of such buildings shall comply with the regulations." S. Rep. No. 538, 90th Cong., 1st Sess. 1-2 (1967)(emphasis added). The report stated that the legislation was necessary "to insure that all public buildings constructed in the future by or on behalf of the Federal Government or with loans or grants from the Federal Government" are designed to be accessible. Id., at 2. The House report on H.R. 6589 [H.R. Rep. No. 1532, 90th Cong., 2d Sess. 2-3 (1968)] and the congressional debates reveal the same intent. For example, Congressman Cleveland, a co-sponsor of H.R. 6589, stated: "It would not require alteration of existing buildings, except to set design standards if alterations were undertaken anyway." 114 Cong. Rec. 17421 (1968).

The difficulty in applying subparagraph (3) to leases by loan or grant recipients is compounded by the second phrase of that paragraph which provides that buildings financed with federal funds are included "only if such building is subject to standards for design, construction, or alteration issued under authority of the law authorizing such grant or loan." If the extent of federal involvement is the grant or loan of program funds used solely to lease a building or facility, it is highly improbable that the law authorizing the grant or loan would authorize issuance of standards for design, construction or alteration of the building.

The treatment in § 4151 of buildings leased directly by the Federal Government also indicates that the Act does not cover buildings leased with loan or grant money. H.R. 6589, as amended in the second session of the 90th Congress, provided that the term "building" would include buildings "leased in whole or in part by the United States after the date of enactment of this Act after construction or alteration in accordance with plans and specifications of the United

states." This language was adopted by the conference committee <sup>8/</sup> and became subparagraph (2) of § 4151. <sup>9/</sup> The House report explains that this language includes buildings "to be leased and constructed or altered pursuant to plans and specifications specified by the Federal Government . . . ." H.R. Rep No. 1532, 90th Cong., 2d Sess. 3 (1968).

In the early versions of S. 222 and H.R. 6589, leasing was not specifically mentioned. At the House hearings, Congressman Grover asked Senator Bartlett the following question: "In view of the language in the bill, Senator, do you think that in (1)(a) where you talk about public buildings being constructed by or on behalf of the Federal Government, do you think that is broad enough to take in the wide range of leasing arrangements that the Federal Government has with respect to Federal Government buildings?" The Senator responded: "I should hope that the regulations of the General Services Administrator would make that abundantly clear. But if there is any doubt, sir, I would favor writing it into the language of the act." House Hearings, *supra* at 6. Congressman Grover's question prompted additional discussion of the leasing question. During the testimony of William Schmidt, a representative of the General Services Administration, the following colloquy occurred between Mr. Schmidt and Congressman Gray:

Mr. Gray: I notice on page 2 of your statement, you say: Thus, the legislation encompasses not only buildings constructed by GSA under the provisions of the Public Buildings Act of 1959, but all structures which must be used by the public and which are financed at least in part by Federal funds.

Did you hear the question that was propounded to Senator Bartlett when we asked him if he felt that post office buildings and other projects, wholly owned by private enterprise, but leased to the Federal Government would be covered under the existing bill; or is it your feeling that we should tighten it up so as to make that clearer?

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<sup>8/</sup> H.R. 1787, 90th Cong., 2d Sess. 1 (1968).

<sup>9/</sup> 82 Stat. 718 (1968). This section was amended in 1976. See n.10 *infra*.

In common usage, "financing" a building generally refers to the method of payment for purchase of the building or the labor and materials needed to construct or alter it. The phrase "financed in whole or in part" appeared in both the House and Senate versions of the bill. The Senate version provided that the term "public building" means any non-residential building "financed in whole or in part with funds provided by a grant or loan made by the Federal Government." S. 222, 90th Cong., 1st Sess. (1967). <sup>6/</sup> The amended House version, H.R. 6589, contained the language which eventually became § 4151. Because of conflicting language in the two bills, a conference committee was convened. 114 Cong. Rec. 20683 (1968). The conference committee recommended that the House version be passed with one amendment not relevant here. H.R. Rep. No. 1787, 90th Cong., 2d Sess. 1 (1968). This recommendation was agreed to in both Houses. 114 Cong. Rec. 23730, 24038 (1968).

Hearings were held by both House and Senate committees. Throughout these hearings, as well as throughout the reports of the congressional committees, it is apparent that this legislation was intended to cover construction of new buildings or planned alteration of existing buildings. There is no indication that it alone was meant to trigger alterations of existing buildings, whether owned by the Federal Government, leased by the Federal Government, or owned or leased by recipients of federal funds. In the Senate hearings on S. 222, the sponsor of the bill, Senator Bartlett, testified as follows:

S. 222 is a simple bill. It seeks only to require that public buildings constructed with Federal funds, whether by or on behalf of the Federal Government or through a grant or loan to some other organization, be designed in such a manner that they be accessible to all the public, including the physically handicapped. I would emphasize here that I would be opposed to amendment to this bill requiring alteration of existing public buildings. Such a program would be, in my view, too expensive to undertake at this time. It is my belief that existing access problems which need remedial action should be taken up on a case-by-case basis.

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<sup>6/</sup> The Senate unanimously passed S. 222 in 1967. 113 Cong. Rec. 24133 (1967). The House did not act on either S. 222 or its own bill, H.R. 6589, until 1968.

Hearing on S. 222 Before the Subcomm. on Public Buildings and Grounds of the Sen. Comm. on Public Works, 90th Cong., 1st Sess. 3 (1967). If "financed" included leasing, the Act would require massive and costly alterations in the many buildings leased or to be leased by recipients of federal funds, contrary to the sponsor's intent. Other statements made at Senate hearings also imply that the Act does not include leased buildings. A representative of the Department of Housing and Urban Development testified that the bill would cover "all contracts for the construction of public buildings, and all grants or loans made by the Federal Government or any department or agency thereof for the purpose of financing the construction of public buildings. . . ." 7/ Id., at 52 (emphasis added). Another witness urged that the words "alter" and "remodel" be included in S. 222 so that the bill would not be limited to new construction but "would also result in causing existing structures to conform to architectural barrierless standards as changes are made in such structures." Id., at 84. (Statement of J.F. Noyle). Reference to "alteration" subsequently was added to the bill.

Nor do statements made by witnesses at the House hearings on H.R. 6589 and S. 222 disclose any belief that the Act would require recipients of federal funds to lease only accessible buildings. Senator Bartlett, repeated that it would only apply to those buildings "to be built in the future." Hearings on H.R. 6589 and S. 222 Before the Subcomm. on Public Buildings and Grounds of the House Comm. on Public Works [House Hearings], 90th Cong., 2d Sess. 5 (1968). Congressman Bennett, the sponsor of H.R. 6589, stated that the legislation "would insure that public buildings financed with public funds be designed to be accessible . . . ." Id. at 7. The entirety of his brief testimony indicates his understanding that "financed" refers to construction or alteration and not to making rental payments. He emphasized the possible cost savings for "construction and design of buildings," and the cruelty of continuing "to approve plans for public buildings" which are inaccessible to the handicapped. Id. In discussing the definition of "public building" financed with federal funds, Congressman Grover used the example of a small business which gets a loan to construct a small factory, and even including this, he suggested, may reach too far. Id., at 35.

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7/ The word "public" in the term "public building" in S. 222 was deleted when the conference adopted the House language.

Mr. Schmidt: I think the language is susceptible to the interpretation that it includes leased buildings, that is, buildings leased in whole by the Government. But I do not believe this is clear in the Senate Report No. 538 that the bill was intended to cover these facilities.

I think it is quite to the contrary.

Mr. Gray: Do you think it should be written into the law, or do you think it could be covered adequately in the House report?

Mr. Schmidt: Actually I would see no objections to the inclusion of leased buildings, that is buildings leased by the Government, to be constructed or under construction, or altered. In fact we are beginning to include this requirement in our leasing procedures on all buildings to be constructed.

Mr. Gray: Do you think adding the word "leased" would cover it?

Mr. Schmidt: I think it would take some additional language to cover the leased facilities so that it would be without question.

Id., at 13. At the end of this discussion, Mr. Schmidt agreed to provide to the committee some statutory language "to make sure that leased buildings, Post Office and otherwise, are going to be covered the same as Government-owned buildings." Id., at 15. During the subsequent House debate on H.R. 6589, which then had been amended to include reference to federal leasing, Congressman Gross asked if that language, subparagraph 2, would cover "the lease-purchase post offices presently being built throughout the country." Congressman Gray responded: "I would say . . . that we did admonish the people downtown to go back and eliminate those barriers which are necessary if we already have the building under lease. And, if it is a new building to be leased, we make it mandatory that the provisions of the bill be carried out." 114 Cong. Rec. 17431 (1968).

It is clear from these discussions that the Congress considered the question of leased buildings. It is also clear that they felt that the language did not clearly cover leased buildings. Accordingly, they added language which unmistakably included buildings to be leased by the Federal Government if such buildings were to be constructed or altered in accordance with plans and specifications of the United States. They went no further. Congress made no amendment to include buildings leased with grant or loan money if that money was not used to finance construction or alteration of the building. 10/

A review of the committee hearings, the committee reports and the floor debates reveals the overwhelming support for the goals of this Act. In the House report, for example, the committee stated: "If people who are physically handicapped are to rehabilitate themselves and seek gainful employment, it is vitally necessary that they have access to and are able to use buildings in which they work, visit and reside in carrying on a normal life." H.R. Rep. No. 1532, 90th Cong., 2d Sess. 4 (1968). Congressman Gray, after noting that H.R. 6589 had received "unanimous support from members on both sides of the aisle," reminded his colleagues that the voluntary efforts of the federal agencies had fallen short and needed to be supplemented by minimum mandatory standards. 114 Cong. Rec. 17429-30 (1968). And the committees emphasized that the purpose of the Act was not to be circumvented by a narrow administrative interpretation of the word "building" by clearly stating their intent: "It is the intent of the committee that the word 'building' as used in this bill be given the broadest possible interpretation and include any structure which may be used by the general public, whether it be a small rest station at a public park or a multimillion

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10/ In 1976, subparagraph (2) of § 4151 was amended to delete the phrase "after construction or alteration in accordance with plans and specifications of the United States." Act of Oct. 18, 1976, § 201(1), 90 Stat. 2507. See also H.R. Rep. No. 1584 - Part I, 94th Cong., 2d Sess. 12 (1976). The Act now includes within the meaning of the word "building", therefore, a building or facility "to be leased in whole or in part by the United States after August 12, 1968." 42 U.S.C. 4151. Thus, it was not until 1976 that the Congress chose to include under the Act even those buildings leased directly by the Federal Government itself.

dollar Federal office building." H.R. Rep. No. 1532, 90th Cong., 2d Sess. 4 (1968); S. Rep. No. 538, 90th Cong., 1st Sess. 3 (1967). We believe that the conclusion reached here is consistent with and furthers legislative intent, although it is a more restrictive interpretation as to the number of structures to which the Act applies. In our opinion, the language directing a broad interpretation of the word "building" refers to the type of structure, not to the leasing or financing arrangement. The examples given in the sentence quoted above support this conclusion, as do excerpts from the congressional hearings. One witness, for example, urged that the definition of "building" be broad enough to include such buildings and facilities as national monuments, parking lots, and border immigration stations. House Hearings at 53 (statement of Heyward McDonald, member, National Commission on Architectural Barriers to Rehabilitation of the Handicapped). In our opinion, it is clear from the statute and its legislative history that buildings leased with federal grant or loan funds are not covered by the act. 11/

## II.

The second issue raised also requires careful analysis of subparagraph (3) of § 4151. A building financed by a federal grant or loan is subject to the Act only if such building or facility is "subject to standards for design, construction, or alteration issued under authority of the law authorizing such grant or loan." 42 U.S.C. 4151. The question presented here is whether applicability of the Act depends on actual issuance of the standards, or if the Act is applicable even if such standards, although authorized, have not been issued. The statutory language is ambiguous, and reasonable persons could interpret it differently. It does state that a structure is included only if it "is" (not "may be") subject to standards "issued" (not "issuable") under the authority of the law authorizing the grant or loan. On the other hand, it could be read to provide that a building is included if it is "subject" to standards issued under the law.

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11/ The memorandum submitted to us by the ATBCB, which is responsible for enforcement of the Act, argues that the term "financed" includes leasing. Although the interpretation of the enforcing agency must be given due deference (see p. 17, infra), it should not be followed if it is clearly erroneous.



That is, if the law authorizes standards to be imposed, the building could be considered to be "subject" to standards issued under the law in question.

The congressional intent underlying this language is difficult to discern. The phrase which imposes the condition that standards be issued did not appear in the Senate version of the bill, S. 222, or in the early House version. See H.R. 6589, 90th Cong., 1st Sess. (1967). <sup>12/</sup> During the House hearings, concerns were expressed which may have caused the language in question to be added. Questions arose, for example, regarding the potentially overbroad definition of "public building". During the testimony of William A. Schmidt, a representative of the General Services Administration, Congressman Waldie asked whether a local project financed primarily by local funds, but which also received generous federal subsidies, would fall within the purview of the legislation. House Hearings, at 17. Neither Mr. Schmidt nor Congressman Gray, Chairman of the subcommittee, could answer the question. Congressman Gray did state, however: "I doubt it very seriously in this legislation. We only have jurisdiction over public buildings and grounds." Id. Mr. Schmidt then opined: "The bill is confined to public buildings as defined in the bill and would not cover federally subsidized public facilities." Id. Later, Congressman Grover again raised the issue of the scope of the definition, suggesting that some restrictive language might be appropriate. Id. at 35. Congressman Gray joined Congressman Grover in his inquiry whether certain public buildings, included in the broad definition in the bill, properly would lie in another legislative jurisdiction. Id. For example, some federally assisted programs, such as Department of Agriculture construction programs, hospital construction, and airport construction would lie with legislative committees other than the Committee on Public

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<sup>12/</sup> As defined in those bills, the term "public building" included simply any building "financed in whole or in part with funds provided by a grant or loan made by the Federal Government, or any department or agency thereof after the date of enactment of this Act." The adjective "public" was later deleted.



Works. Congressman Denney suggested that the ambiguity could be obviated by deleting entirely the section of the definition which included buildings financed with grant or loan funds. Id., at 36-37. This suggestion was criticized by subsequent witnesses who felt it substantially would weaken the bill. Id. at 53, 69, 91 (Statements of Heyward McDonald, William McCahill and Congressman James H. Scheuer).

These questions were not resolved during the hearings. Subsequently, the committee added the language in question, conditioning coverage of the act on whether the building is subject to standards issued under the law authorizing the grant or loan. H.R. Rep. No. 1532, 90th Cong., 2d Sess. 1 (1968). It is possible that the language was intended to minimize potential legislative jurisdictional conflict by limiting imposition of accessibility standards to those situations in which the Congress specifically authorizes construction or design standards to be imposed.

The committee reports and the floor discussion of the bill provide little additional guidance on interpreting this section. The House report does suggest that standards actually must be imposed, by paraphrasing the language as follows: "(T)he Committee amended the legislation to include any (building or facility) financed with funds provided by a Federal grant or loan if the recipients are required by the basic legislation governing the grant or loan to adhere to regulations establishing standards for design, construction, and alterations . . . ." H. Rep. No. 1532, 90th Cong., 2d Sess. 3 (1968)(emphasis added). It can be inferred from remarks on the floor, however, that Congress assumed that the Act would apply to all construction for which standards could be imposed. Several speakers broadly stated that the bill was to reach all buildings without indicating that any discretion was left in the agencies. 114 Cong. Rec. 17429-32 (1968)(remarks of Congressmen Gray, Fulton, Matsunaga and Bennett). If an agency has discretion as to whether to issue standards, then reading the Act to cover only those buildings for which standards have been issued leaves some discretion in the agencies. When Congressman Gude asked Congressman Gray, Chairman of the Subcommittee, if transit facilities were covered by the Act, Mr. Gray unequivocally stated: "If constructed with Federal public funds such facilities would be covered." Id. at 17431.

When interpreting a statute, one may look for guidance to subsequent legislation which may reveal the intent of an earlier statute. Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 380-81 (1969). In 1970, as noted earlier, Congress amended § 4151 to include the Washington Metropolitan Transit Authority. Pub. L. No. 91-205, 84 Stat. 49 (1970). The law authorizing Washington Metro construction did not specifically provide that design standards were to be imposed, although the regional agency did have broad power to design, engineer, and construct the system. See National Capital Transportation Act of 1965, Pub. L. No. 89-173, § 3, 79 Stat. 664. The system was not, however, actually subject to standards for design issued under the act. See Hearings on H.R. 14464 Before the Subcomm. on Public Buildings and Grounds of the House Comm. on Public Works, 91st Cong., 1st Sess. 21 (1969). <sup>13/</sup> According to the Senate Report, this amendment was necessary because the transit authority was a regional agency formed by compact and not a Federal agency, and because "its buildings or structures are not subject to regulation for design, construction, or alteration issued under authority of the law authorizing Federal funds." S. Rep. No. 658, 91st Cong., 1st Sess. 2 (1970). This suggests that mere authorization may not be sufficient. The committee broadly stated, however, that it was the intent of the committee reporting the 1968 Act "that all buildings and structures which are to be used by the general public and are financed in whole or in part with Federal funds be designed and constructed so as to be accessible to the physically handicapped." Id. The House report stated that the 1968 Act "made it incumbent upon the Federal Government to insure that all public buildings constructed with Federal funds or constructed on behalf of the Federal Government be constructed in such a way that they are accessible to all people." H.R. Rep. No. 750, 91st Cong., 1st Sess. 1 (1969). The report also stated coverage of the Act was in doubt "[b]y virtue of the unique Federal-State relationship created by the [transit] compact" and implied that the amendment resolves doubt as to the applicability of the Act to mass transit facilities. Id., at 1, 2.

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<sup>13/</sup> At the outset of the hearings, Congressman Gray, Chairman of the Subcommittee, stated that the legislation became necessary "when we found that the original legislation did not include rolling stock." Hearings, at 4. The testimony at the hearings centered on the Act's application to mass transportation systems in general, not on the question of federal imposition of general design standards.

In 1973, the Department of Transportation requested an opinion from the General Services Administration on the applicability of § 4151 to grants and loans to state and local communities by the Urban Mass Transportation Administration for the construction and alteration of mass transit facilities under § 3 of the Urban Mass Transportation Act of 1964, 49 U.S.C. 1602. Section 3 authorizes the Secretary of Transportation to make loans or grants to assist in construction of mass transportation facilities "on such terms and conditions as he may prescribe." The GSA concluded that § 4151 is applicable to grants and loans for construction and alteration of buildings and facilities of that kind, if the authorizing legislation is interpreted to permit loans and grants to be subject to design and construction standards. <sup>14/</sup> The General Counsel of GSA relied heavily on the 1970 amendment concerning the Washington Metro System, and on the instruction in the legislative history of the Act that the word "building" be broadly interpreted.

This has also been the interpretation of the ATBCB, which in 1973 was given responsibility for enforcing the Act. The Board's proposed regulations provided that the term "building" includes any building financed by a grant or loan if such building "may be" subject to standards for design, construction, or alteration. 41 Fed. Reg. 23598 (1976). In the final regulations, "may be" was changed to "is", but the Board made clear in its comments that this change was not a change in its interpretation of the statute. It wrote:

The term "building," § 1150.2(d), has also been revised by deleting the phrase "may be" in (iii) and substituting the word "is" in lieu thereof. One Federal commentator felt that the proposed language might be construed as a substantive change. That was not intended and the change has been made to more closely

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<sup>14/</sup> The letter stated: "Since the applicability of (the Act) is not dependent upon the exercise of discretionary authority by the agency, we also conclude that the Act is applicable, notwithstanding the fact that UMTA, as a matter of policy, may determine not to make such loans and grants subject to design and construction standards not related to the handicapped." (Opinion letter of William E. Casselman, General Counsel, GSA (February 14, 1973)).

follow the definition of "building" in Pub. L. 90-480. This does not effect any change in interpreting the statute. See Opinion of General Counsel, General Services Administration, "First Report of the Architectural and Transportation Barriers Compliance Board" at pages 49-50.

41 Fed. Reg. 55442 (1976). This has been the consistent interpretation of the Board since it was established. 15/

When a statute has been officially interpreted by those agencies charged with its administration and enforcement, such interpretations must be given due deference. Griggs v. Duke Power Co., 401 U.S. 424, 433-34 (1971); Udall v. Tallman, 380 U.S. 1, 15 (1965); Norwegian Nitrogen Products Co. v. United States, 288 U.S. 294, 315 (1933). Generally, reasonable interpretations of such agencies are not to be rejected simply because alternative interpretations may be advanced. Miller v. Youakim, 440 U.S. 125, 144 (1979); Train v. Natural Resources Defense Counsel, Inc., 421 U.S. 60, 87 (1975). In our opinion, the interpretations advanced by GSA and ATBCB are not unreasonable and, for this reason, we conclude that the term "building" covers those buildings or facilities financed by federal grants or loans if the law authorizing the grant or loan also authorizes the issuance of standards for design, construction or alteration, 16/ even if, in its discretion, the agency chooses not to issue such standards. 17/

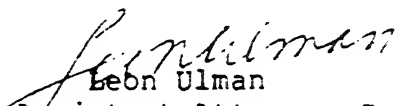
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15/ Letter and memorandum from the ATBCB to this office (March 24, 1980).

16/ We interpret the phrase "standards for design, construction, or alteration" as referring to architectural standards in general, not to accessibility standards in particular.

17/ In reaching the opposite conclusion, HEW argues that the Board's construction raises due process problems because of lack of notice to the program recipients. We do not think the statute is unconstitutionally vague, particularly when the agencies responsible for administering and enforcing the act officially have taken a consistent position for seven years. A statute is not unconstitutionally vague because it may be ambiguous or open to two constructions. Williams v. Brewer, 442 F.2d 657, 660 (8th Cir. 1971). It is the responsibility of the Board and the granting agencies to see that recipients are informed of, and comply with the Act.

We hope this opinion will be helpful to the Interagency Coordinating Council and the agencies administering this Act.

  
Leon Ulman  
Deputy Assistant Attorney General  
Office of Legal Counsel

APPENDIX 2



United States of America  
**Office of  
Personnel Management**

Washington, D.C. 20415

or Reply, Refer To

Your Reference

MEMORANDUM FOR: Interagency Coordinating Council

FROM: Jule M. Sugarman

SUBJECT: Agreement between the ICC representatives of the Department of Health, Education, and Welfare and the Architectural and Transportation Barriers Compliance Board regarding coordination of Sections 502 and 504 of the Rehabilitation Act of 1973, as amended.

I am pleased to report to the Council that the staffs of both the Office for Civil Rights (OCR), Department of Health, Education, and Welfare, and the Architectural and Transportation Barriers Compliance Board (ATBCB) have reached working agreement on the following model for coordinating enforcement responsibilities of the two agencies under Sections 502 and 504 of the Rehabilitation Act of 1973, as amended:

1. Upon reasonable notice from HEW and within the limits of the resources of the ATBCB, the ATBCB will provide technical training for staff of HEW. Similarly, HEW will provide the ATBCB with Section 504 training.
2. The ATBCB will concentrate its technical assistance activities on providing architectural accessibility information to government agencies and other interested parties. Technical assistance on program accessibility and other Section 504 questions shall be the responsibility of HEW.
3. HEW and the ATBCB will notify each other and other interested Federal agencies of complaints, investigations, and compliance reviews whenever either HEW or the ATBCB determines that the jurisdiction of another agency may be involved.
4. With respect to HEW funded buildings subject to the Architectural Barriers Act and as resources permit, HEW will, as part of its complaint investigations and compliance reviews:
  - (a) Investigate compliance with requirements of the Architectural Barriers Act;
  - (b) report to the ATBCB all findings of compliance or noncompliance resulting from investigations of compliance with requirements of the Architectural Barriers Act; and
  - (c) propose resolutions of violations of the requirements of the Architectural Barriers Act to the ATBCB.



Page 2 - Interagency Coordinating Council  
Members

5. Upon receipt of a finding and/or a proposed resolution submitted by HEW under 4 above, the A&TBCB will, within an agreed upon time period, notify HEW either that it accepts the HEW finding and/or resolution or will propose an alternate finding and/or resolution. If the A&TBCB fails to give this notification, both parties will consider the HEW finding and/or resolution as accepted. If the A&TBCB rejects the HEW finding and/or resolution, HEW will so notify the affected organization(s) and will proceed to act under its Section 504 authority. The A&TBCB will proceed to act under its Section 502 authority.
6. With respect to HEW funded recipients, when the A&TBCB conducts investigations on its own initiative, it will invite participation of HEW. However, the A&TBCB will not examine Section 504 issues. The A&TBCB will notify HEW of any architectural barrier problems in buildings which are not subject to the jurisdiction of the A&TBCB but which may violate HEW's Section 504 regulations.
7. The A&TBCB and HEW agree to defer agreement on transportation and communication issues with the understanding that the Department of Education and the Department of Health and Human Services will participate with the ATBCB in studying these issues.
8. The A&TBCB and HEW representatives agree to prepare a detailed memorandum of understanding on or before April 25, 1980 implementing the above points and will seek approval by the A&TBCB and the Secretary of HEW. In the event that the A&TBCB and the Secretary of HEW are unable to reach agreement, they will refer the matter back to the Interagency Coordinating Council for assistance in resolving the disagreement.


CONCUR

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Max Cleland  
Chairperson

Architectural & Transportation  
Barriers Compliance Board

CONCUR



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Roma J. Stewart, Director  
Office for Civil Rights

Department of Health, Education  
and Welfare Designee to the  
Interagency Coordinating Council

APPENDIX 3



MARTIN A. WILLIAMS, JR., N.J., CHAIRMAN  
JENNINGS RANDOLPH, W. VA.  
CLA BOWNE PELL, R.I.  
EDWARD M. KENNEDY, MASS.  
CARL ALDEN WILSON, WIS.  
THOMAS F. EAGLETON, MO.  
ALAN CRANSTON, CALIF.  
RONALD W. REAGAN, JR., ILL.  
HOWARD M. METZENBAUM, OHIO  
RICHARD S. SCHWEIKER, PA.  
JACOB K. JAVITS, N.Y.  
ROBERT T. STAFFORD, VT.  
ORRIN G. HATCH, UTAH  
WILLIAM L. ARMSTRONG, COLO.  
GORDON J. HUMPHREY, N.H.

STEPHEN J. PARADISE, GENERAL COUNSEL  
AND STAFF DIRECTOR  
MARJORIE M. WHITTAKER, CHIEF CLERK

## United States Senate

COMMITTEE ON LABOR AND  
HUMAN RESOURCES  
WASHINGTON, D.C. 20510

March 24, 1980

Honorable Jimmy Carter  
The White House  
Washington, D.C. 20500

Dear Mr. President,

With the creation of the Department of Education, lead-agency responsibility for coordination of the implementation of section 504 of the Rehabilitation Act of 1973 by federal agencies, assigned to the Department of Health, Education, and Welfare by Executive Order No. 11914, must be reassigned. I am writing to express my belief that this responsibility should be vested in the Department of Justice. I also wish to share with you several other concerns in connection with this matter. Many organizations representing and serving handicapped individuals concur with me in my judgment and concerns.

The Department of Justice has already shown itself to be a strong advocate on behalf of disabled persons, and the Department is experienced in coordinating compliance programs among government agencies, such as governmentwide implementation of title VI of the Civil Rights Act of 1964 pursuant to Executive Order No. 11247. The Office of Legal Counsel presently gives opinions in response to questions posed by other agencies regarding various section 504 issues. Placing the responsibility for the coordination of section 504 in the Civil Rights Division in the Department of Justice would also be compatible with the Chairmanship of the title V Interagency Coordinating Council by the Assistant Attorney General for that Division and the Division's support functions in connection with the Council's title V coordinating activities.

Finally, I believe that designation of the chief law enforcement officer of the United States, the Attorney General, as the official ultimately responsible to you for section 504 coordination and enforcement would be a dramatic and very real statement that the civil rights of disabled persons have achieved parity with those civil rights protected by the Civil Rights of 1964.

I have considered the possibility of the Department of Education being assigned this role and believe this would be unwise for a number of reasons. First, this Department will initially labor under the major difficulties inherent in starting anew and in establishing itself as a strong and respected component of the Executive Branch. I feel that the new Department will have its hands full in carrying out its tremendous responsibilities for enforcing in its own programs title VI of the Civil Rights Act of 1964 as well as title IX of the Education Amendments of 1972 and title V of the Rehabilitation Act of 1973.

Second, the task of monitoring and coordinating section 504 activities -- an area in which there remains controversy and recalcitrance -- will require the investment of a good deal of energy, resources, and strength. I feel that the new Department of Education will not be able to devote the requisite effort to this undertaking.

Third, I feel that -- given the above considerations -- the very fact that the lion's share of federal service programs for disabled individuals will be housed in and administered by the Department of Education mitigates against giving the same agency governmentwide section 504 responsibility. From the standpoint of section 504's viability, I would prefer a less directly involved overseer for the way in which this new Department and all Federal agencies carry out their title V responsibilities.

I, therefore, respectfully urge you to issue an executive order placing lead-agency responsibility in the Department of Justice for implementation of section 504 (including the 1978 amendment to that section requiring that activities of federal agencies themselves adhere to this non-discrimination provision).


Also, I urge that the new section 504 executive order give the lead agency a clear mandate -- and adequate resources -- to oversee actively both the implementation and the enforcement of section 504 and its regulations.

Finally, I was pleased to learn, from a recent memorandum to the title V Council from Stuart Eizenstat, that you would soon reaffirm your strong commitment to "prohibit discrimination against the handicapped ... [and] to enforcing title V" in light of the recent Supreme Court decision in Southeastern Community College v. Davis. I respectfully suggest that the most appropriate time to do this would be upon the issuance of the new executive order.

I would greatly appreciate your immediate attention to these matters, and await your reply.

With warm regards,

Cordially,

  
Alan Cranston

cc: Honorable Benjamin Civiletti  
Honorable Shirley Hufstedler  
Honorable Patricia Roberts Harris  
Honorable Ray Marshall  
Honorable Max Cleland  
Honorable Stuart Eizenstat



APPENDIX 3a





## Presidential Documents

Title 3—

Executive Order 12250 of November 2, 1980

The President

### Leadership and Coordination of Nondiscrimination Laws

By the authority vested in me as President by the Constitution and statutes of the United States of America, including section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1), Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682), and Section 301 of Title 3 of the United States Code, and in order to provide, under the leadership of the Attorney General, for the consistent and effective implementation of various laws prohibiting discriminatory practices in Federal programs and programs receiving Federal financial assistance, it is hereby ordered as follows:

#### 1-1. *Delegation of Function.*

1-101. The function vested in the President by Section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1), relating to the approval of rules, regulations, and orders of general applicability, is hereby delegated to the Attorney General.

1-102. The function vested in the President by Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682), relating to the approval of rules, regulations, and orders of general applicability, is hereby delegated to the Attorney General.

#### 1-2. *Coordination of Nondiscrimination Provisions.*

1-201. The Attorney General shall coordinate the implementation and enforcement by Executive agencies of various nondiscrimination provisions of the following laws:

- (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).
- (b) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*).
- (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).
- (d) Any other provision of Federal statutory law which provides, in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

1-202. In furtherance of the Attorney General's responsibility for the coordination of the implementation and enforcement of the nondiscrimination provisions of laws covered by this Order, the Attorney General shall review the existing and proposed rules, regulations, and orders of general applicability of the Executive agencies in order to identify those which are inadequate, unclear or unnecessarily inconsistent.

1-203. The Attorney General shall develop standards and procedures for taking enforcement actions and for conducting investigations and compliance reviews.

1-204. The Attorney General shall issue guidelines for establishing reasonable time limits on efforts to secure voluntary compliance, on the initiation of sanctions, and for referral to the Department of Justice for enforcement where there is noncompliance.

1-205. The Attorney General shall establish and implement a schedule for the review of the agencies' regulations which implement the various nondiscrimination laws covered by this Order.

1-206. The Attorney General shall establish guidelines and standards for the development of consistent and effective recordkeeping and reporting requirements by Executive agencies; for the sharing and exchange by agencies of compliance records, findings, and supporting documentation; for the development of comprehensive employee training programs; for the development of effective information programs; and for the development of cooperative programs with State and local agencies, including sharing of information, deferring of enforcement activities, and providing technical assistance.

1-207. The Attorney General shall initiate cooperative programs between and among agencies, including the development of sample memoranda of understanding, designed to improve the coordination of the laws covered by this Order.

#### *1-3. Implementation by the Attorney General.*

1-301. In consultation with the affected agencies, the Attorney General shall promptly prepare a plan for the implementation of this Order. This plan shall be submitted to the Director of the Office of Management and Budget.

1-302. The Attorney General shall periodically evaluate the implementation of the nondiscrimination provisions of the laws covered by this Order, and advise the heads of the agencies concerned on the results of such evaluations as to recommendations for needed improvement in implementation or enforcement.

1-303. The Attorney General shall carry out his functions under this Order, including the issuance of such regulations as he deems necessary, in consultation with affected agencies.

1-304. The Attorney General shall annually report to the President through the Director of the Office of Management and Budget on the progress in achieving the purposes of this Order. This report shall include any recommendations for changes in the implementation or enforcement of the nondiscrimination provisions of the laws covered by this Order.

1-305. The Attorney General shall chair the Interagency Coordinating Council established by Section 507 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794c).

#### *1-4. Agency Implementation.*

1-401. Each Executive agency shall cooperate with the Attorney General in the performance of the Attorney General's functions under this Order and shall, unless prohibited by law, furnish such reports and information as the Attorney General may request.

1-402. Each Executive agency responsible for implementing a nondiscrimination provision of a law covered by this Order shall issue appropriate implementing directives (whether in the nature of regulations or policy guidance). To the extent permitted by law, they shall be consistent with the requirements prescribed by the Attorney General pursuant to this Order and shall be subject to the approval of the Attorney General, who may require that some or all of them be submitted for approval before taking effect.

1-403. Within 60 days after a date set by the Attorney General, Executive agencies shall submit to the Attorney General their plans for implementing their responsibilities under this Order.

#### *1-5. General Provisions.*

1-501. Executive Order No. 11764 is revoked. The present regulations of the Attorney General relating to the coordination of enforcement of Title VI of the Civil Rights Act of 1964 shall continue in effect until revoked or modified (28 CFR 42.401 to 42.415).

1-502. Executive Order No. 11914 is revoked. The present regulations of the Secretary of Health and Human Services relating to the coordination of the implementation of Section 504 of the Rehabilitation Act of 1973, as amended, shall be deemed to have been issued by the Attorney General pursuant to this Order and shall continue in effect until revoked or modified by the Attorney General.

1-503. Nothing in this Order shall vest the Attorney General with the authority to coordinate the implementation and enforcement by Executive agencies of statutory provisions relating to equal employment.

1-504. Existing agency regulations implementing the nondiscrimination provisions of laws covered by this Order shall continue in effect until revoked or modified.



THE WHITE HOUSE,  
November 2, 1980.



APPENDIX 4



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## Office of the Attorney General

Washington, D. C. 20530

October 24, 1979

Memorandum to: The President

From : The Attorney General **BRE**

Subject : Report of the Interagency  
Coordinating Council

I am writing to you in my capacity as Chairman of the Rehabilitation Act Interagency Coordinating Council to provide you with a report on the Council's activities.

Section 120 of the Rehabilitation Act Amendments of 1978 (29 U.S.C.A. § 794(c) (1979 Supp.), P.L. 95-602) established the Council to coordinate and facilitate the effective Federal implementation of the affirmative action and nondiscrimination provisions of Title V of the Rehabilitation Act which generally prohibit discrimination on the basis of handicap in Federal employment and in Federal contracts and grant programs.

The Council is required to report to the President and Congress each year on its activities "together with such recommendations for legislative or administrative changes as it concludes are desirable...." The Council was only recently constituted and held its organizational meeting on August 9, 1979. The Council has appointed a staff and formulated an agenda for Council activities. I anticipate that by the time I send my next report to you in July 1980, I will be able to advise that the Council has effectively discharged its responsibilities under the Rehabilitation Act.

One matter discussed by the Council at its October 18 meeting requires your personal attention. I am informed that the Architectural and Transportation Barriers Compliance Board cannot transact business because it lacks a quorum. The Board was established under section 502 of the Rehabilitation Act of 1973 (P.L. 93-112), 87 Stat. 1619) to enforce the Architectural Barriers Act



of 1968, as amended (42 U.S.C. § 4151). The Act requires that -- after August 12, 1968 -- federally occupied and funded buildings and facilities be designed, constructed and altered so that they are accessible to and usable by the physically handicapped.

Section 118 of the Rehabilitation Amendments of 1978 (29 U.S.C.A. § 792) added the Attorney General or his designee to the Board, thus bringing the total of federal agency representatives on the Board to ten, and further provided that eleven members of the public (of whom five are to be handicapped individuals) shall be appointed by the President as members of the Board. To date no public member has been appointed, although the Amendments became effective on November 6, 1978. Due to a legislative oversight, the Congress did not provide the Board with continuing authority to function pending the Presidential appointment of the public members. The Department's Office of Legal Counsel advised the Chairman of the Board by letter of April 11, 1979 that it lacked a legal quorum to transact business until at least one public member is appointed and at least eleven Board members participate in Board activities.

The function of the Board is an important one, and I hope that the appointment of the Board's public members will be made as soon as possible.

APPENDIX 5



MAY 1, 1980

## OFFICE OF THE WHITE HOUSE PRESS SECRETARY

## THE WHITE HOUSE

## REMARKS OF THE PRESIDENT

AT

## THE PRESIDENT'S COMMITTEE ON EMPLOYMENT OF THE HANDICAPPED

Washington Hilton Hotel

(10:03 A.M. EST)

THE PRESIDENT: Thank you very much and good morning to you. Secretary Marshall, Chairman Russell, Mayor McNichols, ladies and gentlemen and a special friend of mine who is here this morning who was willing to ride over here with me from the White House, Senator Jennings Randolph.

Senator Randolph has been a friend of handicapped Americans long before many of you were born. In 1931 as he prepared to conduct a successful campaign for the United States Senate, he had a belief long before many people agreed with him that blind Americans should be brought out of the dark places and put into the forefront of productive life.

He introduced a bill when he was a freshman Senator in 1933 to establish a program for blind entrepreneurs to sell goods in public buildings; federal, state, local and later, of course, to expand this program to the private sector. This year 3974 blind people, because of his good work, are actively involved and their total sales, he tells me, was more than \$150 million.

This bill was signed by a handicapped person of whom many of you have heard, Franklin Delano Roosevelt, our President. This is a good indication of what can be done when all of us recognize the tremendous potential of the handicapped to serve productive lives in our great society. John Adams, the second man to hold the office of President, and a man of very deep religious convictions and a firm commitment to freedom, said people and nations are forged in the fires of adversity.

You here today understand the truth and the pain of that statement. You have triumphed over limitations, sometimes very severe limitations, and you now work productively to help shape the world, to reshape the world so that it can be a better place not only to you but for others. Your will and your determination have been forged in the fires of adversity and you must now be full participants in every aspect of a life of this nation and I'm determined to assure that that goal will be reached. (Applause.)

This must include education, employment, housing, transportation and also the political process. You must have the right to develop your talents to the fullest, the right to do things and to learn in the process, the right to fail on occasion along with all the rest of us, and the right to try again. (Applause.) And in exercising these kinds of rights, your strength growing out of adversity will help to make America strong.

Next year has been designated as the International Year of Disabled Persons by the United Nations, and as President, I intend not only to cooperate in this effort but to see that the entire decade of the 1980s is one in which handicapped people have full access to our society, maximum independence, and the opportunity to

MORE

develop and to use your full capabilities. (Applause.)

As you know, much has been done in the last three years to lay the foundation for achieving the goal which I have just outlined to you. When I took office, the Rehabilitation Act had been law for four years. Regulations to prohibit discrimination against handicapped persons in employment, in education and health programs had still not been issued. With your help, as you well remember, we got the first regulations issued in three months. (Applause.)

And in 1978 I signed amendments which apply to the non-discriminatory provisions of this Act, not only in the private sector but to the Federal Government as well. Anti-discrimination laws are the cornerstone of civil rights for the handicapped. And by the end of 1980 all federal agencies will have final regulations implementing Section 504. (Applause.)

It's not enough just to issue regulations. Now we'll take the next step toward ending discrimination against the handicapped, to carry out the law, and to carry out the provisions of those regulations. I will soon issue an Executive Order now being prepared placing the responsibility for coordinating enforcement of these regulations in the Department of Justice under the Attorney General of the United States. (Applause.)

I want to thank you at this time for your help to me in assuring that the Congress supports the increased attention needed for programs benefiting the handicapped. My budget request for education of handicapped children for the coming year, in spite of very stringent limits as you well know, is more than three times the amount proposed by my predecessor's last budget.

We've already increased budget authority for schools teaching the handicapped by 41 percent. Next week we celebrate together the inauguration of a new department of education headed by Shirley Hufstedler who will have the responsibility for the majority of programs that benefit handicapped Americans. We're cutting through bureaucratic red tape and bureaucratic confusion and delay. You will no longer need to wonder or to be uncertain about who specifically is responsible for the education of the handicapped. This will be a great step forward.

In 1977, as you remember, we took another good step by creating the department, or the office rather, of independent living for the disabled. This is an extremely important effort to let handicapped people learn through their own practical experience how they can avoid being dependent on others through practical application of programs and their own initiative. And in the process not only do the handicapped learn how to be independent, but federal agencies and private citizens who are not handicapped also learn with them. With this office we've done more for the housing of handicapped people in the last three years than had been done in the previous 40 years. We still have a long way to go but we've already increased funds for handicapped construction housing from \$13 million to \$99 million. (Applause.)

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This increase of more than 700 percent in a short period of time also includes, as you know, congregate housing services. This fall we will launch a new independent living demonstration project to expand on what we have already done. This will dramatize low existing federal programs that might in the past have not been focused on this single issue. It can be coordinated and utilized more effectively and more efficiently to make independent living possible for more handicapped people.

One of the most fundamental and cherished rights accorded to all citizens in our society is the right to move freely, yet architectural barriers, as you well, remain a constant reminder to disabled Americans that our nation has not completely opened its doors to all of our citizens. We cannot rebuild a nation overnight which ignored this problem for generations, but we can provide access to all public buildings. By October of this year, construction will be underway in virtually all federal buildings to make them accessible to handicapped people. (Applause.)

I was honored to have sponsored the first White House Conference on Handicapped Individuals and to have participated in it with many of you assembled in this room today. And I'm proud that Dr. Howard Rusk will chair the National Council on the Handicapped. I will name other remaining members of this Council later on today.

Dr. Rusk will provide strong leadership in this important step as he advises with me and my Administration and others on issues affecting handicapped persons. If you have good ideas on how we might do a better job, be sure to let those ideas come through him to me and to be utilized throughout our nation.

Above all, in considering problems of the handicapped, every adult citizen should be able to participate in the most basic of civil rights, and that is voting. You and I must continue to encourage state and local and party officials to increase their effort to make polling places accessible and to provide alternate registration and voting methods to assure greater opportunity for political participation by handicapped citizens who must stay in their homes.

For many handicapped Americans transportation is the first barrier to participation in other activities. The Department of Transportation is now working to ensure that newly purchased equipment in the nation's public transportation systems will be accessible to all. We will continue to support these efforts and seek new ways through research, through demonstration, through standards required in bids for sales to achieve greater access for handicapped persons to mass transit.

But physical access is only part of the problem. For the hearing impaired, we've helped to fund that National Captioning Institute. As a result of the Institute's activities, some television programs, two of the major networks and the Public Television network are already being captioned and they will add more hours everyday so the deaf people, with a special device on their own television sets, can have captioned programs to enjoy and to learn.

MORE

Many more of these programs and commitments are underway. This project demonstrates the success of joint federal and private efforts. When such television programming is impractical, I will have my major speeches interpreted in sign language for the hearing impaired. (Applause.)

It is not only important that you hear what a President has to say, it is also important that you let the President know in answer to his speeches what you think he ought to say next time and ought to do. (Applause.)

Prevention of disease and prevention of disability has been a major priority of my Presidency also: The President's Commission on Mental Health, headed by my wife; the Child Health Assurance Program which gives early diagnosis and treatment and prevention; the Mental Health Systems Act now making its way through the Congress; and the National Health Plan that needs to be implemented in this country in the future -- were all designed to prevent illness and to prevent disability and to improve health care once a person becomes ill or disabled.

When I took office, for instance, nearly 35 million young Americans were not immunized against preventable diseases. For a country that helped to rid the entire world of the worstcrippler of the young, polio, that was a disgrace to all of us. We immediately set out, to correct it and I'm proud that by last fall, more than 90 percent of American youngsters under 15 were immunized. We are now working as hard as we can on the other 10 percent.

For the future, the new National Institute of Handicapped Research will become the focus of all federal research into disability. The bringing together of these efforts which had formerly been scattered all over the federal government, will help them to learn from one another, to spend its limited funds more effectively and also to let you know where to go with a special problem or special advice or counsel or encouragement.

One problem has been on my mind lately and that is spinal cord injuries which are, as you know, a major cause of disability. Between 8,000 and 10,000 new injuries occur every year, mostly to the young. I will launch a major new effort designed to speed the day when permanent spinal injury can be prevented and reversed.

We have had remarkable news recently from scientists and medical researchers that if a major spinal injury can be treated very quickly after it occurs, permanent disability can be prevented.

First, we will establish a federal interagency task force on spinal injuries directed from my office in the White House which will develop and implement a national strategy for providing better care and for enhancing current federal spinal research programs. And then, in order to guide the development and the implementation of this national strategy, I will establish a President's Council on Spinal Cord Injury to serve until our goals are firmly developed and firmly established. (Applause.)

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Our nation was founded 200 years ago to provide freedom and opportunity for every single citizen, not just so individuals can fulfill themselves, but also because our society as a whole needs the full participation of every member. We cannot do without the tremendous talent of our handicapped people. We cannot afford to waste lives that could have been full and useful. We cannot be satisfied with maintaining dependence when independence is possible. And above all, we cannot afford the cost in human suffering.

Over the past 200 years, we have lowered the barriers that originally existed and brought many segments of our people from full participation. We must now bring down the barriers that prevent handicapped Americans from full participation, for just as all of us have benefitted from the increased participation of minorities and women in the past two decades, all Americans will benefit from the full participation of handicapped people in the years to come.

We cannot rebuild our society overnight, but we can make sure case by case, event by event, person by person, program by program, that the right choices for the handicapped are made. Working together, we can make certain that the 1980s will be the decade in which the handicapped will at last enter and merge completely with the mainstream of a wonderful American life. (Applause.)

This will, of course, be of great benefit to you and those whom you love and those whom you represent here in this important meeting. But the realization of the full potential of the handicapped Americans will also be of great benefit to our nation. Thank you very much. I love you all. (Applause.)

END

(10:23 A.M. EST)





APPENDIX 6



# H. R. 7466

To amend section 3102 of title 5, United States Code, and section 7 of the Federal Advisory Committee Act to permit the employment of personal assistants for handicapped Federal employees both at their regular duty station and while on travel status.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 29, 1980

Mrs. SCHROEDER introduced the following bill; which was referred to the Committee on Post Office and Civil Service

---

## A BILL

To amend section 3102 of title 5, United States Code, and section 7 of the Federal Advisory Committee Act to permit the employment of personal assistants for handicapped Federal employees both at their regular duty station and while on travel status.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That section 3102 of title 5, United States Code, is amended  
4       by adding at the end thereof the following new subsections:  
5       “(e)(1) For the purposes of this title, a “handicapped  
6       employee” is an employee of the Federal Government who is

1 also a "handicapped individual" as defined in section 706 of  
2 title 29.

3       “(2) The head of each agency may employ or assign,  
4 subject to section 209 of title 18 and to the provisions of this  
5 title governing appointment and chapter 51 and subchapter  
6 III of chapter 53 of this title governing classification and  
7 pay, personal assistants essential and necessary in order that  
8 a handicapped employee may perform his official duties. The  
9 employment of such assistance shall be subject to such regu-  
10 lations as shall be promulgated by the Office of Personnel  
11 Management.

12       “(3) Personal assistants shall be available to perform  
13 other duties as designated by the head of the agency in addi-  
14 tion to responsibilities under this section.

15       “(f) When the head of an agency determines that it is in  
16 the Government's interest that a handicapped employee  
17 travel in order to perform a Government function, the head of  
18 the agency may authorize—

19               “(1) the payment of travel expenses and per diem  
20 to another Federal employee to accompany the handi-  
21 capped employee during the authorized travel period;  
22 or

23               “(2) the issuance of travel orders to the handi-  
24 capped employee which provide for the payment, either  
25 directly or by reimbursement, for the personal services

1 of an individual to accompany the handicapped employ-  
2 ee during the authorized travel period. Payment for  
3 such personal services shall not exceed the amount  
4 which could be paid to a Federal employee, assigned to  
5 perform such services, in compensation, travel ex-  
6 penses, and per diem. Such a personal assistant shall  
7 not be considered a Federal employee for any purposes  
8 other than for the purposes of chapter 81 of this title  
9 (relating to compensation for injury) and sections 2671  
10 through 2680 of title 28 (relating to tort claims).”.

11 FEDERAL ADVISORY COMMITTEE ACT PROVISIONS FOR  
12 PERSONAL ASSISTANTS

13 SEC. 2. Section 7 of the Federal Advisory Committee  
14 Act is amended by inserting therein the following new sub-  
15 section (d)(3):

16 “(d)(3) Members, staffs, and consultants of advisory  
17 committees who are ‘handicapped individuals’ as defined in  
18 section 706 of title 29, United States Code, when performing  
19 advisory committee duties, may be provided the services of a  
20 personal assistant pursuant to the provisions of subsections  
21 3102 (e) and (f) of title 5.”.

22 EFFECTIVE DATE

23 SEC. 3. The provisions of this Act shall take effect sixty  
24 days after the date of the enactment of this Act.



APPENDIX 7







ASSISTANT ATTORNEY GENERAL

United States Department of Justice  
WASHINGTON, D.C. 20530

21 DEC 1979

MEMORANDUM FOR: James T. McIntyre, Jr.  
Director  
Office of Management and  
Budget

FROM: Drew S. Days III  
Chairman Designee  
Interagency Coordinating  
Council

SUBJECT: Interagency Coordinating  
Council Action Re Staffing  
and Funding Needs of  
Architectural and Transporta-  
tion Barriers Compliance Board

I appreciate the opportunity to talk by telephone with you and Ms. Suzanne Woolsey of your Office on December 13 regarding the action the Interagency Coordinating Council took at its December 13 meeting on the staffing and funding needs of the Architectural and Transportation Barriers Compliance Board. This issue was placed on the Council's agenda at the request of Ms. Woolsey.

In brief, it is the Council's view that the Board cannot meet its various statutory mandates under section 502 of the Rehabilitation Act given its current staffing level of 18. The plight of the Board is most graphically depicted by the fact that the Board has more governing members (21) than staff. My understanding is that OMB personnel have considered the loan of staff from member agencies of the Board under section 502(f) of the Rehabilitation Act as one possible response to the critical staffing needs of the Board.

At the request of OMB personnel, HEW's Office of Human Development Services conducted an analysis of the Board's staffing needs and, at the request of OMB, sent the analysis as well as copies of documents submitted to the Council by the Board staff bearing on its funding and staffing needs.

As I mentioned on the telephone, the Council's recommendations are essentially three. First, for future fiscal years the Board should be authorized by OMB to submit a separate line item budget. Currently, the Board's budget submissions are reviewed by HEW and become a part of the HEW budget request. Given the Board's enforcement role under section 502 of the Rehabilitation Act, the procedure results in an awkward dependency for the Board and constitutes a potential conflict of interest for HEW. No one at the December 13 Council meeting was able to marshal a justification for the continuation of this method of funding the Board.

Second, the Council strongly endorses levying upon the Board's member agencies for the loan of slots rather than personnel for the remainder of FY '80, if this is a legal and feasible option. The temporary assignment to an agency of personnel with loyalties elsewhere is seldom a satisfactory substitute for giving an agency the flexibility to establish a permanent staff structure. The Council supports the Board staff request for a sufficient number of slots to increase the fulltime staff to 95 for the remainder of FY '80. An alternative approach to borrowing agency slots might be to send a supplemental appropriation to the Hill. However, my understanding is that the HEW-Labor FY '80 appropriation bill has not been passed by Congress because of a continuing division on the abortion question, and that both Departments are functioning under a continuing resolution. Under these circumstances, a supplemental appropriation bill might not be a practical approach to resolve the problem. In any event, the possibility that such a bill might languish on the Hill would seem to make this option less certain to lead to the desired result.

Third, for FY '81, the Council endorses the Board staff request for an appropriation of \$3 million dollars as authorized under the Rehabilitation Act Amendments of 1978 (29 U.S.C.A. 792(i)(1979 Supp.)). For the past three fiscal years, the funding for the Board has been essentially flat -- 1 million dollars. HEW has proposed no increase in that funding level for FY '81.

The Council is aware that OMB must weigh the merits of these recommendations against the competing demands of other Executive Branch agencies. Yet, the inescapable fact is that the Board is clearly in need of a substantial staff increment if it is to achieve the statutory objectives envisioned by Congress.

Although a small agency, the Board's function under the Rehabilitation Act is a key element in eliminating discrimination against the handicapped. I know that you will do all that is reasonably possible to give the Board the necessary staff and funds to carry out its important program.

cc: Council Designees  
and Staff



APPENDIX 8



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

JUL 21 1980

Honorable Max Cleland  
Chairperson  
Architectural and Transportation  
Barriers Compliance Board  
Washington, D.C. 20201

Dear Mr. Cleland:—

This is in response to your March 24, 1980, letter in which you requested our assistance regarding two situations confronting the Architectural and Transportation Barriers Compliance Board (ATBCB): (1) increased staffing and funds; and (2) the submission of the FY 1982 budget for ATBCB directly to OMB.

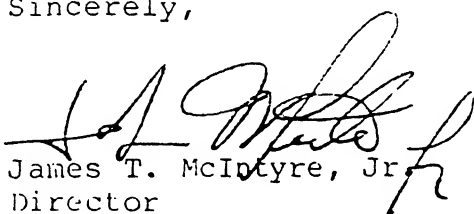
With regard to the funding situation, as you know the President's revised 1981 Budget requested a \$6.5,000 1980 supplemental appropriation for the ATBCB. The Budget also requested 12 additional authorized positions for the ATBCB.

Congress agreed to the Administration's request for increased staffing and funding for the ATBCB in the 1980 Supplemental Appropriation and Rescission legislation signed by the President on July 8, 1980.

With regard to the direct submission to OMB of the ATBCB 1982 budget justification materials, we have no objection to direct submission for 1982, so long as the justification fully complies with the requirements of OMB Circular A-11. However, we urge that ATBCB staff closely coordinate the development of the 1982 OMB justification and budget with the Department of Education to ensure that A-11 requirements are fully met.

We hope this information will be helpful in dealing with these situations confronting you.

Sincerely,

  
James T. McIntyre, Jr.  
Director

cc: C. William Fischer





APPENDIX 9



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10



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

JUN 23 1980

MEMORANDUM FOR: Stuart E. Eizenstat  
Assistant to the President  
for Domestic Affairs and  
Policy

FROM: Drew S. Days III  
Chairman  
Interagency Coordinating  
Council

SUBJECT: Cleveland Amendment

At the request of the Interagency Coordinating Council, established under Title V of the Rehabilitation Act, 29 U.S.C. §794c, I am writing to you to express our deep concern over H.R. 6417, a Department of Transportation authorization bill.

Most recently the Committee on Public Works and Transportation of the House of Representatives adopted an amendment offered by Representative James Cleveland of New Hampshire which provides that recipients of funds from the Urban Mass Transportation Administration may comply with their obligation not to discriminate against qualified handicapped individuals by expending at least three percent of funds received under sections 5 and 18 of the Urban Mass Transportation Act on transportation of handicapped persons. This is the so-called "local option" amendment. A plan for such expenditures and containing specified provisions must be approved by the Secretary of Transportation, in consultation with the Architectural and Transportation Barriers Compliance Board.

The Committee added a provision that would allow the older, pre-1970 fixed rail systems, e.g., subways, to make major modifications to stations or construct new stations as extensions without providing accessibility. That provision is clearly contrary to both the letter and spirit of the Architectural Barriers Act, 42 U.S.C. §4151 et seq., and section 504 of the Rehabilitation Act, as amended, 29 U.S.C. §794, which mandate that accessibility be provided when federally funded facilities are designed, constructed, or altered.

At the request of the Chairperson of the Architectural and Transportation Barriers Compliance Board, the Interagency Coordinating Council considered this amendment. The Council strongly opposes this amendment.

The Council shares the view expressed by Secretary Goldschmidt in the enclosed letter which he had sent to the Committee prior to its consideration of H.R. 6417, stating the Nation's public transportation systems must be accessible to handicapped persons. The local option amendment is contrary to that fundamental policy.

Under subsection 5 of the amendment, a Secretary of Transportation approved plan would satisfy the requirements of the other Federal laws relating to discrimination against handicapped persons in transportation. The subsection would nullify the mandates of the Urban Mass Transportation Act, the Architectural Barriers Act, and the Rehabilitation Act, to provide accessible transit services and facilities to integrate handicapped persons into the mainstream of society. Therefore, the Council strongly opposes subsection 5.

It should be briefly observed that the historic exclusion of disabled persons from the mainstream of society, including transit services, cannot and will not be overcome by permitting Federal recipients to expend three percent of their program funds. Accessibility can readily be provided when subway stations are renovated or newly constructed. Transportation services must be recognized as an integral part of society to which all persons, including handicapped persons, are entitled. In considering this amendment, the Administration should also weigh the sociological benefits of accessible transit systems.

The Council believes that the Administration must continue to move forward to implement its sincere commitment to disabled persons. Approval by the Administration of H.R. 6417 in its present form with Representative Cleveland's amendment would be viewed by disabled persons as a retreat by the Administration from the President's strong support for section 504 of the Rehabilitation Act which he reiterated at the President's Committee on Employment of the Handicapped.

The Interagency Coordinating Council urges that the Administration continue to vigorously oppose the local option amendment.

cc: The Attorney General  
Associate Attorney General



THE SECRETARY OF TRANSPORTATION  
WASHINGTON, D.C. 20590

MAY 7 1960

Honorable Harold T. Johnson  
Chairman, Committee on Public Works  
and Transportation  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Bizz:

With the full Committee mark-up of the transit legislation scheduled for today, I feel it's important that you be aware of the Administration's position relative to funding levels and other matters.

The Surface Transportation Subcommittee mark-up completed on May 1 would authorize \$27.7 billion over the next five years for transit capital and operating assistance. This exceeds the \$24.7 billion level proposed in the Administration's bill by \$3 billion. While the House levels exceed the Administration's in all program categories, most of the difference lies in the Section 3 and 5 grant programs. In the House bill the Section 3 discretionary grant authorization exceeds the Administration level by \$1.3 billion and the Section 5 formula grant program is \$900 million above the Administration's proposal.

The five year levels proposed by the Administration represent the first increment of our \$43 billion 10-year capital funding commitment to expand public transportation capacity by 50 percent. While providing for substantial service and ridership increases, the Administration feels strongly that the benefits of transit expansion must be balanced against the need to control pressures on the Federal budget. Because our proposed increases to the mass transit capital program will be financed almost entirely by Windfall Profits Tax revenues, these program levels will not result in additions to the Federal budget deficit. The 5-year funding levels proposed in H.R. 6417 are 12 percent higher than the Administration's recommendation and are inconsistent with our need to reduce inflation and balance the Federal budget.

In Senate mark-up of this legislation yesterday, the Committee adopted the levels proposed by the Administration, after lengthy discussion. This endorsement of the President's levels recognized the reasonableness of the proposed levels in balancing transit investments with other pressing national needs.

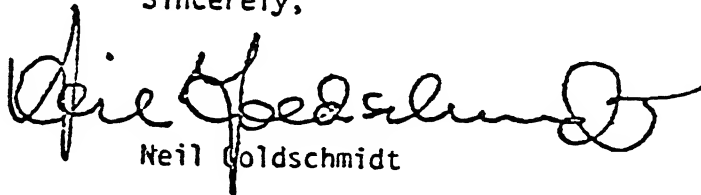
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For the Federal-aid Highway program, the House bill sets an obligation limitation for FY 1981 at \$8.75 million. Unless the \$3.4 billion limitation recommended by the Administration is adopted, it will be extremely difficult to preserve the FY 1981 outlay savings necessary to bring the Federal budget into balance. Another concern is the authorization level for Transportation Systems Management projects. To avoid possible misunderstanding, assuming the Subcommittee's position is in agreement with the levels proposed by the Administration, it should be made clear that \$250 million is being authorized for this program each year and that the figures in Section 135(d) are intended to be aggregate sums for the years subsequent to 1981.

The Administration remains committed to ensuring that the Nation's public transportation systems will be accessible to handicapped persons, and therefore opposes the amendment introduced by Congressman Cleveland and adopted by the Subcommittee.

We will be providing additional comment on other issues at a later date.

Sincerely,



Neil Goldschmidt



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

AUG 12 1980

Honorable Jennings Randolph  
Chairman  
Committee on Environment and  
Public Works  
United States Senate  
Washington, D.C. 20510

Re: H.R. 6417 (Transportation  
Authorization Bill)

Dear Chairman Randolph:

At the request of the Interagency Coordinating Council, established under Title V of the Rehabilitation Act, 29 U.S.C. §794c, I am writing to you to express our deep concern over H.R. 6417, a Department of Transportation authorization bill.

The Interagency Coordinating Council was established under the Rehabilitation Act Amendments of 1978 to maximize effort, promote efficiency and eliminate conflict among the various federal agencies with responsibility for enforcing the provisions of Title V of the Rehabilitation Act which contains the civil rights sections of the Act protecting the interests of handicapped persons. The membership of the Council consists of the heads of the Department of Labor, Health and Human Services, Education, and Justice, the Office of Personnel Management, the Equal Employment Opportunity Commission, and the Architectural and Transportation Barriers Board.

One of the functions of the Council is to report to the Congress its recommendations on legislation where the interests of handicapped persons are involved. It is on that basis that the Council instructed me to write to you on H.R. 6417.



Recently the Committee on Public Works and Transportation of the House of Representatives adopted an amendment offered by Representative James Cleveland of New Hampshire which provides that recipients of funds from the Urban Mass Transportation Administration may comply with their obligation not to discriminate against qualified handicapped individuals by expending at least three percent of funds received under sections 5 and 18 of the Urban Mass Transportation Act on transportation of handicapped persons. This is the so-called "local option" amendment. A plan for such expenditures and containing specified provisions must be approved by the Secretary of Transportation, in consultation with the Architectural and Transportation Barriers Compliance Board.

The Committee added a provision that would allow the older, pre-1970 fixed rail systems, e.g., subways, to make major modifications to stations or construct new stations as extensions without providing accessibility. That provision is contrary to both the letter and spirit of the Architectural Barriers Act, 42 U.S.C. §4151 et seq., and section 504 of the Rehabilitation Act, as amended, 29 U.S.C. §794, which mandate that accessibility be provided when federally funded facilities are designed, constructed, or altered.

At the request of the Chairperson of the Architectural and Transportation Barriers Compliance Board, the Interagency Coordinating Council considered this amendment. The Council strongly opposes the amendment.

The Council shares the view expressed by Secretary Goldschmidt in the enclosed letter which he had sent to the Committee prior to its consideration of H.R. 6417, stating the Nation's public transportation systems must be accessible to handicapped persons. The local option amendment is contrary to that fundamental policy.

Under subsection 5 of the amendment, a Secretary of Transportation approved plan would satisfy the requirements of the other federal laws relating to discrimination

against handicapped persons in transportation. The subsection would nullify the mandates of the Urban Mass Transportation Act, the Architectural Barriers Act, and the Rehabilitation Act, to provide accessible transit services and facilities to integrate handicapped persons into the mainstream of society. Therefore, the Council strongly opposes subsection 5.

It should be briefly observed that the historic exclusion of disabled persons from the mainstream of society, including transit services, cannot and will not be overcome by permitting federal recipients to expend three percent of their program funds. Accessibility can readily be provided when subway stations are renovated or newly constructed. Transportation services must be recognized as an integral part of society to which all persons, including handicapped persons, are entitled. In considering this amendment, the Congress should also weigh the sociological benefits of accessible transit systems.

Approval by the Congress of H.R. 6417 in its present form with Representative Cleveland's amendment would be viewed by disabled persons as a significant retreat resulting in undercutting legislation previously passed by Congress to protect the rights of this Nation's handicapped citizens.

Accordingly, the Interagency Coordinating Council urges that the Senate conferees oppose the Cleveland amendment if it survives a House vote and H.R. 6417 is sent to conference with S.2720 (the Federal Public Transportation Act of 1980) which passed the Senate on June 25, 1980.

Sincerely,

A handwritten signature in dark ink, reading "Drew S. Days III". The signature is written in a cursive, slightly stylized font. The "D" is large and loops around the "S". The "III" is written as three distinct vertical strokes.

Drew S. Days III  
Assistant Attorney General  
Civil Rights Division

cc: The President of the Senate  
Members of the Committee  
Hon. Robert C. Byrd  
Hon. Alan Cranston  
Hon. Ted Stevens  
Hon. Harrison A. Williams, Jr.  
Hon. Richard S. Schweiker  
Hon. Robert T. Stafford





U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

AUG 12 1980

Honorable Harold T. Johnson  
Chairman  
Committee on Public Works  
and Transportation  
United States House of  
Representatives  
Washington, D.C. 20515

Re: H.R. 6417 (Transportation  
Authorization Bill)

Dear Chairman Johnson:

At the request of the Interagency Coordinating Council, established under Title V of the Rehabilitation Act, 29 U.S.C. §794c, I am writing to you to express our deep concern over H.R. 6417, a Department of Transportation authorization bill.

The Interagency Coordinating Council was established under the Rehabilitation Act Amendments of 1978 to maximize effort, promote efficiency and eliminate conflict among the various federal agencies with responsibility for enforcing the provisions of Title V of the Rehabilitation Act which contains the civil rights sections of the Act protecting the interests of handicapped persons. The membership of the Council consists of the heads of the Department of Labor, Health and Human Services, Education, and Justice, the Office of Personnel Management, the Equal Employment Opportunity Commission, and the Architectural and Transportation Barriers Board.

One of the functions of the Council is to report to the Congress its recommendations on legislation where the interests of handicapped persons are involved. It is on that basis that the Council instructed me to write to you on H.R. 6417.

Recently your Committee adopted an amendment offered by Representative James Cleveland of New Hampshire which provides that recipients of funds from the Urban Mass Transportation Administration may comply with their obligation not to discriminate against qualified handicapped individuals by expending at least three percent of funds received under sections 5 and 18 of the Urban Mass Transportation Act on transportation of handicapped persons. This is the so-called "local option" amendment. A plan for such expenditures and containing specified provisions must be approved by the Secretary of Transportation, in consultation with the Architectural and Transportation Barriers Compliance Board.

The Committee added a provision that would allow the older, pre-1970 fixed rail systems, e.g., subways, to make major modifications to stations or construct new stations as extensions without providing accessibility. That provision is contrary to both the letter and spirit of the Architectural Barriers Act, 42 U.S.C. §4151 et seq., and section 504 of the Rehabilitation Act, as amended, 29 U.S.C. §794, which mandate that accessibility be provided when federally funded facilities are designed, constructed, or altered.

At the request of the Chairperson of the Architectural and Transportation Barriers Compliance Board, the Interagency Coordinating Council considered this amendment. The Council strongly opposes the amendment.

The Council shares the view expressed by Secretary Goldschmidt in the enclosed letter which he had sent to you prior to the Committee's consideration of H.R. 6417, stating the Nation's public transportation systems must be accessible to handicapped persons. The local option amendment is contrary to that fundamental policy.

Under subsection 5 of the amendment, a Secretary of Transportation approved plan would satisfy the requirements of the other federal laws relating to discrimination

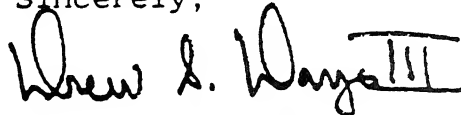
against handicapped persons in transportation. The subsection would nullify the mandates of the Urban Mass Transportation Act, the Architectural Barriers Act, and the Rehabilitation Act, to provide accessible transit services and facilities to integrate handicapped persons into the mainstream of society. Therefore, the Council strongly opposes subsection 5.

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The Council believes that the House must continue to move forward to implement its commitment to disabled persons. Approval by the House of H.R. 6417 in its present form with Representative Cleveland's amendment would be viewed by disabled persons as a significant retreat resulting in undercutting legislation previously passed by Congress to protect the rights of this Nation's handicapped citizens.

Accordingly, the Interagency Coordinating Council urges that the House vote against the local option Amendment when H.R. 6417 reaches the floor of the House for consideration.

Sincerely,



Drew S. Days III  
Assistant Attorney General  
Civil Rights Division

cc: The Speaker of the House  
Members of the Committee  
Hon. James C. Wright, Jr.  
Hon. John J. Rhodes  
Hon. John Brademas  
Hon. Robert H. Michel  
Hon. Carl D. Perkins  
Hon. John M. Ashbrook  
Hon. Paul Simon  
Hon. Kenneth B. Kramer  
Hon. Mario Biaggi



APPENDIX 10







U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

**AUG 12 1980**

Memorandum for: Stuart E. Eizenstat  
Assistant to the President  
for Domestic Affairs and  
Policy

From: Drew S. Days III  
Chairman Designee  
Interagency Coordinating  
Council

Subject: International Year of  
Disabled Persons

At the request of the Interagency Coordinating Council, one of the outgoing co-chairman of the Federal Interagency Committee for the International Year of Disabled Persons (IYDP) gave the Council a report of a recent meeting on the Committee's progress in developing a program for the participation of the United States Government in the IYDP. The report was not encouraging and constitutes the reason for this memorandum.

As you know, in 1977 the General Assembly of the United Nations proclaimed 1981 as the "International Year of Disabled Persons." The UN invited all member states and concerned organizations to participate in the IYDP by establishing measures and programs to assist handicapped persons.

The United States was a co-sponsor of the resolution and U.S. position papers have been presented in the meantime in strong support of the IYDP and the relative importance of the IYDP to the United States.

The United States is one of a 23 member advisory committee to oversee the development of a UN action program. A draft of a World Plan of Action for Disabled Persons has been prepared by the UN Secretariat and will be discussed at the Second Advisory Committee meeting in Vienna during August 20-29, 1980.

Thus far the only visible indication of a concerted American effort to participate in a meaningful way in the IYDP has come from the private sector. Participation of non-government organizations in the program in the United States is being spearheaded by the U.S. Council for the International Year of Disabled Persons, a private group chaired by David T. Kearns, the President of the Xerox Corporation. The Council has received both Federal and private funding.

Federal participation in the IYDP is being coordinated by the Federal Interagency Committee for the IYDP which involves approximately 30 Federal agencies. Recently three new co-chairpersons have been selected to head the Committee:

Co-chairpersons for  
Domestic Affairs:

Dr. Edwin W. Martin  
Assistant Secretary  
for Special Education  
and Rehabilitation  
Services  
Department of Education

Dr. Carolyn Harmon  
Deputy Assistant  
Secretary  
Office of Social  
Service Policy  
Department of Health  
and Human Services

Co-chairperson for  
International  
Affairs:

Mr. John McDonald  
Acting Deputy Assistant  
Secretary for Inter-  
national Organization  
Affairs  
Department of State

The problem that the Committee faces is a familiar one: no funding and inadequate staffing. Until recently the Committee functioned with a Staff Director (borrowed from the Veterans Administration) who had no staff. The new Staff Director has been borrowed from the Department of Education but also continues to function in her job at D.O. Ed. The staff now consists of a borrowed secretary, an administrative assistant from the White House and a summer intern. This contrasts with the U.S. Council's current staff of 12 (to be expanded to 18) and budget of \$2.4-2.6 million dollars. It is difficult to see how the Federal Government can mount a successful program of participation in the IYDP without White House direction to provide the necessary funding and staffing for this effort.

The Council thought you should be aware of this problem, particularly because of earlier Administration statements in support of the IYDP and your own request that the Secretary of State and Secretary of Health, Education and Welfare establish and co-chair an Inter-agency Committee.

The Interagency Coordinating Council, of course, is in no position to make specific recommendations on funding and staffing. That is within the province of the new co-chairpersons of the Committee. However, in our view, it would be an embarrassment for the Administration to commit resources to this project which were inadequate to redeem its stated commitment to the IYDP.

A budget and augmented staff for the Committee would not suffice, however, in the absence of the full cooperation of the Federal agencies. A White House directive to the participating agencies underscoring the Administration's expectation that the agencies will give their participation suitable priority may be appropriate. Finally, it may also be helpful to take steps to ensure that the public and private sectors henceforth collaborate in devising a comprehensive plan for effective participation in the IYDP.

For your convenience I am attaching the President's statement on the IYDP and relevant correspondence regarding the establishment of the Federal Interagency Committee.

cc: Director McIntyre  
Secretary Muskie  
Secretary Harris  
Secretary Hufstedler

THE WHITE HOUSE

WASHINGTON

June 22, 1979

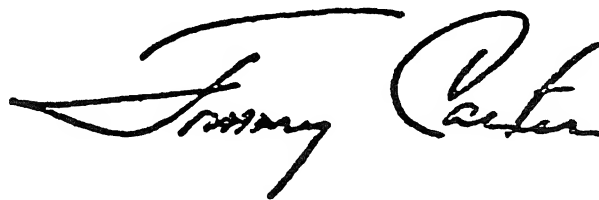
The United Nations, honoring its commitment to human rights and human dignity, has proclaimed 1981 as the International Year of Disabled Persons. As President, I will see that those agencies under my jurisdiction join in this effort to give handicapped persons the opportunity for full participation and equality.

I commend the leadership and enthusiastic support of the many private organizations which are already making plans for the observance of this Year.

As a nation, we can take pride in the contributions that persons with disabilities have made in such fields as medicine, science, education, the arts, law, journalism, the entire sweep of technological advances, politics and government.

We must seize the opportunity afforded by the observance of this International Year to increase public recognition of what remains to be done before handicapped persons are permitted full participation in the life of their communities. We need to erase residual prejudices and discriminatory actions and eliminate, where possible, the remaining barriers that still block their paths.

Let us resolve to do this in a spirit of cooperation and understanding of each other's needs so that the International Year of Disabled Persons will achieve not only these objectives, but will bring about a new era of universal respect for human rights, including the rights of disabled people.

A handwritten signature in black ink, reading "Jimmy Carter". The signature is fluid and cursive, with the first name "Jimmy" and the last name "Carter" clearly distinguishable.



AUG 27 1979

M E M O R A N D U M

TO           The Secretary of the Treasury  
             The Secretary of Defense  
             The Attorney General  
             The Secretary of the Interior  
             The Secretary of Agriculture  
             The Secretary of Commerce  
             The Secretary of Labor  
             The Secretary of Housing and Urban Development  
             The Secretary of Transportation  
             The Secretary of Energy  
             The Permanent Representative to the United Nations  
             The Director, Office of Management and Budget  
             The Administrator, Veterans Administration  
             The Director, International Communication Agency

SUBJECT:   International Year for Disabled Persons - 1981

The White House has asked that we take lead responsibility for U.S. observance of the International Year for Disabled Persons - 1981 (IYDP). We invite the participation of your agency in this effort, and ask that you designate a representative to serve on the Federal Interagency Committee for the IYDP.

The 31st United Nations General Assembly proclaimed 1981 as the International Year for Disabled Persons. Its purpose is to obtain support from Member Nations for full participation of the world's 450 million disabled persons in the social and economic life of the communities in which they live through: (1) assistance, training, care, and employment; (2) study and research; (3) education and public awareness; and (4) providing effective measures for prevention of disability and rehabilitation of disabled persons.

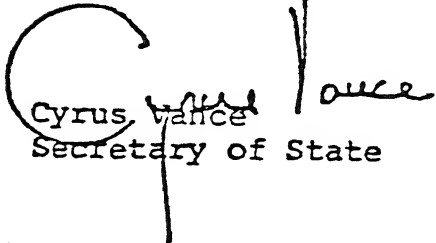
Effective U.S. participation in the IYDP must involve a wide range of U.S. Departments and Agencies whose programs affect disabled persons. Staff members of our two Departments have begun to develop plans for appropriate activities related to this endeavor. Active participation by state and local governments as well as the private and voluntary sectors is also essential to the success of the U.S. effort, and we expect to enlist their support.

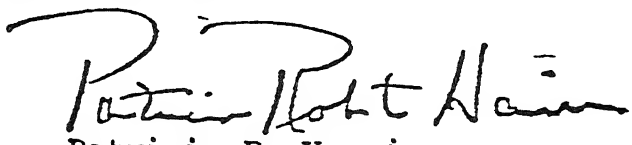


We are establishing a Federal Interagency Committee for the IYDP to ensure the proper coordination of the U.S. observance of the Year. The Committee will be co-chaired by the Departments of State (for international aspects) and Health, Education, and Welfare (for domestic observance). Representing State as Co-Chairperson will be Mr. John D. Fox, Director, Office of Development and Humanitarian Programs, Bureau of International Organization Affairs. Mr. Robert Humphreys, Commissioner, Rehabilitation Services Administration, will co-chair the Committee for HEW.

The Interagency Committee is expected to function through 1981. It may establish working groups to plan specific activities or projects in observance of the Year.

We request that you consider the ways in which your agency may best contribute to U.S. observance of the IYDP in its domestic and/or international aspects, and we invite you to appoint a representative to the Federal Interagency Committee for the IYDP. Please inform the Secretary of State (with a copy to the Secretary of HEW) by September 15, 1979, of the name and title of your representative. We expect that the Committee will hold its first meeting shortly thereafter.

  
Cyrus Vance  
Secretary of State

  
Patricia R. Harris  
Secretary of Health, Education,  
and Welfare



THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE  
WASHINGTON, D. C. 20201

AUG 27 1979

MEMORANDUM FOR THE HONORABLE JACK WATSON  
THE HONORABLE STU EIZENSTAT

This is in reply to your memorandum of April 23 requesting the Secretaries of State and Health, Education, and Welfare to take the lead responsibility for U.S. efforts relating to the International Year for Disabled Persons (IYDP) 1981.

Secretary Vance and I will establish a Federal Interagency Committee for IYDP to ensure the proper coordination of the U.S. effort. The committee will be co-chaired by the Departments of State (for international aspects) and Health, Education, and Welfare (for domestic observance). Secretary Vance and I are sending a memorandum to all Cabinet Members announcing the formation of the Interagency Committee for IYDP and requesting that they designate a representative to serve on the Committee. Representing State as Co-chairperson will be John D. Fox, Director, Office of Development and Humanitarian Programs, Bureau of International Organization Affairs. Mr. Robert Humphreys, Commissioner, Rehabilitation Services Administration, will co-chair the committee for HEW.

The Interagency Committee is expected to function through 1981, and may establish working groups to plan specific activities or projects in observance of the Year. Our staff responsible for the Year are meeting with representatives from the private and voluntary sectors to encourage their full participation.

An informal steering committee has met to begin planning for the U.S. observance. We have been fortunate to have representatives from your office (Ellen Goldstein and Diana Elms) participate in this group.

It is important that we have the full support and participation of the White House to assure the success of IYDP. We will appreciate your continued interest.

  
Patricia Roberts Harris

HEW-OS WASHINGTON

APR 24 8 35 AM '79 April 23, 1979

MEMORANDUM FOR:

THE SECRETARY OF STATE  
THE SECRETARY OF HEALTH, EDUCATION  
AND WELFARE ✓

FROM:

JACK WATSON *Jack*  
STU EIZENSTAT *Stu*

SUBJECT:

International Year of Disabled  
Persons (IYDP)

The U.N. has declared 1981 to be the International Year of Disabled Persons. Many nations are getting organized and are already planning their national IYDP activities.

While United States representatives have participated in U.N. activities on IYDP, no broad national planning for the U.S. has yet been organized. We believe that our country's role will be critical to the success of the IYDP. Furthermore, our handicapped citizens will be looking to the federal government to begin at once planning, organizing, and encouraging wide national participation in IYDP.

Coordination of this effort should begin now. Therefore, we request that you co-chair and convene, as soon as possible, an Inter-Agency Committee on IYDP. The committee should include in its planning the active support and participation of the private and voluntary sectors and state and local governments as well as the federal government.

We will be happy to lend any assistance that we can to the Inter-Agency Committee.

APPENDIX 11





United States Department of Justice

WASHINGTON, D.C. 20530

ASSISTANT ATTORNEY GENERAL

SEP 24 1975

Honorable Harrison A. Williams, Jr.  
Chairman  
Committee on Labor and Human  
Resources  
United States Senate  
Washington, D.C. 20510

Re: S. 446

Dear Senator Williams:

Because of the responsibility of the Executive Branch for law enforcement, we believe it appropriate to express our views on S. 446 which would amend Title VII of the Civil Rights Act of 1964 to prohibit discrimination against handicapped persons to the same extent Title VII protections are now accorded to minorities and women. I am authorized to state that the views expressed herein as to S. 446 are the views of the Administration.

First, we endorse amending Title VII to prohibit employment discrimination against handicapped persons for the same reasons previously expressed in Mr. Eizenstat's letter to you of July 31, 1979.

There are, however, important conceptual and practical differences between nondiscrimination on the grounds of race, color, religion, sex or national origin, and the problems of handicapped persons. While a simple non-discrimination provision would be of assistance to many persons who are perceived to be handicapped, it would be of limited practical assistance to many other persons who have serious impairments. In order to provide appropriate equality of opportunity, we believe it is necessary to include a statutory provision requiring an employer to make a reasonable accommodation to the impairment of a handicapped person.

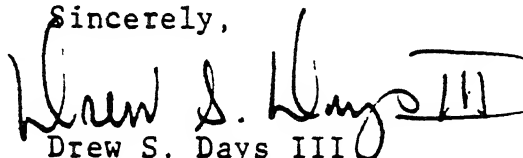
The Committee Report expresses the view that an employer should be obliged to make a reasonable accommodation; but the Committee declined to include any statutory language to accomplish that objective. Sen.Rep. No. 96-316, 7-10. Thus, the plain language of the bill simply prohibits discriminatory practices.

Unlike Title V of the Rehabilitation Act, Title VII, as presently written and developed through judicial interpretation, carries no implication that reasonable accommodation is an integral component of the Title VII nondiscrimination provisions. Accordingly, we believe that the absence of specific language requiring employers to make reasonable accommodation to the impairment of qualified handicapped persons, jeopardizes the effectiveness of the bill and is not remedied by language in the Committee Report. In the absence of specific language providing for a reasonable accommodation, the bill might well result in judicial rulings that no substantial accommodation is required. See, Trans World Airlines v. Hardison, 432 U.S. 63, 83-85 (1977).

Accordingly, we recommend that S. 446 be modified to include express statutory language requiring employers to make reasonable accommodations to the impairments of handicapped persons, unless the accommodation would impose a significant hardship on the employer.

We would be pleased to discuss this matter with you or your staff.

Sincerely,



Drew S. Days III  
Assistant Attorney General  
Civil Rights Division

cc: Members of the Committee

APPENDIX 12







# Department of Justice

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STATEMENT

OF

DREW S. DAYS, III  
ASSISTANT ATTORNEY GENERAL  
CIVIL RIGHTS DIVISION

BEFORE THE  
SUBCOMMITTEE ON SELECT EDUCATION  
COMMITTEE ON EDUCATION AND LABOR  
HOUSE OF REPRESENTATIVES

CONCERNING

THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD  
AND THE  
INTERAGENCY COORDINATING COUNCIL

ON

JUNE 11, 1980



Mr. Chairman, thank you for extending to me the opportunity to discuss the recent activities of the Interagency Coordinating Council which relate to the Architectural and Transportation Barriers Compliance Board.

As you are probably aware, I appear before you with three assignments regarding handicapped persons' rights. I am Chairman-designee of the Interagency Coordinating Council, a member of the Architectural and Transportation Barriers Compliance Board, and the Assistant Attorney General heading the Justice Department Division that will soon have responsibility for coordinating the federal government's overall enforcement of section 504 of the Rehabilitation Act. I hope your subcommittee and others in the Congress will note with appreciation that as part of this Administration's commitment to a balanced budget and the careful spending of the taxpayers' funds, we have begun to require agency officials to function in multiple capacities.

While I speak lightly of this triple function I can assure you that all of us at the Department of Justice take extremely seriously our duty to enforce the federal laws designed to protect the rights of handicapped persons.

Our commitment has been intensified by the President's decision to give to the Department coordinating responsibility for §504. In announcing this decision on May 1 to the President's Committee on Employment of the Handicapped, when he became the first President since Lyndon Johnson to appear before that group, Mr. Carter said, "I intend \* \* \* to see that the entire decade of the 1980's is one in which handicapped people have full access to our society, maximum independence, and the opportunity to develop and to use [their] full capabilities."

The Executive Order now in preparation to carry out the President's statement will provide the Department of Justice the coordinating authority that was held by the Department of Health, Education and Welfare for federally-assisted programs; it will also give new authority to coordinate federally-conducted programs.

I look forward to the new role that the Justice Department will play in this important effort. This morning, however, as you requested, my remarks will focus on the activities of the Interagency Coordinating Council. I will describe briefly the establishment, functions and composition of the Council and then inform you of its major activities on the issues relating to the Board.

The Council was established under the Rehabilitation Act Amendments of 1978 to promote efficiency and eliminate inconsistency among the various federal agencies responsible for implementing and enforcing Title V of the Rehabilitation Act of 1973, which contains the civil rights provisions of the Act, which include:

-- Section 501, providing for affirmative action in the Federal employment of handicapped persons. The Equal Employment Opportunity Commission (EEOC) has direct authority to enforce the requirements of §501 by virtue of Section 4 of the President's Reorganization Plan No. 1 of 1978 (5 U.S.C.A. App. II, 142 (1979 Supp. )).

-- Section 502, providing for the establishment of the Architectural and Transportation Barriers Compliance Board, composed of 11 public members and 10 Federal department and agency heads, charged with the enforcement of the Architectural Barriers Act of 1968, as amended (29 U.S.C.A. 792). The Act requires that -- after the effective date of August 12, 1968 -- certain Federally owned, occupied or financed buildings and facilities must be designed, constructed and altered so that they are accessible to and usable by the physically handicapped (42 U.S.C. 4151).

-- Section 503, providing for affirmative action in the employment of handicapped persons by Federal contractors having Federal contracts in excess of \$2,500. Section 503 is enforced

by the Department of Labor which is also charged under Executive Order 11758, §2 (39 FR 2075, January 17, 1974) with the responsibility (in consultation with the Department of Defense and the General Services Administration) to issue §503 implementing regulations.

-- Section 504, prohibiting discrimination on the basis of handicap in programs and activities receiving Federal financial assistance and (since 1978) programs and activities conducted by "any Executive agency or by the United States Postal Service." HEW previously coordinated the implementation of §504 by virtue of Executive Order 11914, (41 FR 17871, April 28, 1976) but only with respect to programs of Federal assistance. The Executive Order preceded the 1978 Rehabilitation Act Amendments which extended the reach of §504 to federally conducted programs and activities. As I have noted, the President has decided to place the coordinating responsibility in the Department of Justice.

The membership of the Council consists of the heads of the Departments of Health and Human Services , Labor, Justice, Education , and the heads of the Equal Employment Opportunity Commission, the Office of Personnel Management and the Board. At the request of James T. McIntyre, Jr., Director of the Office of Management and Budget, Attorney General Bell agreed in August 1979 to serve as the Council's first Chairman and appointed the Assistant Attorney General for Civil Rights as Chairman-Designee.

The other participating designees of the Council are: Roma J. Stewart, Director of the Office for Civil Rights, HHS; Donald Elisburg, Assistant Labor Secretary for Employment Standards Administration; Commissioner Armando Rodriguez of the EEOC; Jule M. Sugarman, Deputy Director, OPM; Cynthia Brown, Assistant Secretary for Civil Rights-designate, D.O.Ed.; and Guy McMichael, General Counsel of the Veterans Administration, representing the ATBCB Chairman, Max Cleland, the Veterans' Administrator. The Council held its organizational meeting in August 1979 and has held eight meetings since that time.

#### AGENDA ISSUES

Since it began to operate, the Council has developed an agenda of issues it views as essential to the carrying out of its mission. Several of those relate directly to the Board.

a. Policy issues related to overlapping enforcement responsibilities under Title V of the Rehabilitation Act.

As noted above, the Board is principally involved in the enforcement of the Architectural Barriers Act (ABA). Further, as a result of the 1978 Rehabilitation Act Amendments, §502 of the Rehabilitation Act directs the Board to establish minimum guidelines and requirements for standards issued by four other Federal agencies (DOD, USPS, HUD, and GSA) under the ABA.



Concurrently, the uniform Federal agency §504 regulations require full program accessibility for program beneficiaries. As to existing buildings and facilities used in a federally assisted program, structural modifications are required under §504 regulations in the absence of feasible alternatives (e.g., relocation of the program to an accessible site). As to new construction (i.e., construction begun after the effective date of the relevant Federal agency's §504 regulation) buildings and facilities used in federally assisted programs must be barrier free.

Accordingly, grantees of Federal assistance may be subject to the jurisdiction of the Board under §502 of the Rehabilitation Act by their receipt of federal construction funds and also be subject under §504 to the jurisdiction of the Federal grant agency which either (1) provided the construction funds for the facility in question, or (2) provided Federal assistance to programs conducted in the federally funded structure. Thus, the enforcement and guideline setting responsibilities of the Board under §502 overlap with the corresponding responsibilities of the Federal grant agencies under §504. The Council believed it appropriate to address the problem of overlapping jurisdiction at an early date and requested the Board Staff and HEW -- as the lead-agency for §504 -- to confer to ensure the effective and consistent implementation of their respective statutory responsibilities.

The Board staff and HEW personnel exchanged memoranda and held meetings to resolve the legal and policy issues arising out of the jurisdictional overlap. At the March 13 meeting of the Council it was agreed that Jule Sugarman, Deputy Director of the Office of Personnel Management, would chair a meeting where all outstanding policy issues would either be resolved or referred by Mr. Sugarman to the Council with his recommendations for resolution.

Briefly, the most pressing policy issues related to (1) the sharing of technical assistance between the Board and HEW; (2) HEW and Board notification to each other and other interested Federal agencies of complaints, investigations and compliance reviews affecting the jurisdiction of the notified agency; and (3) cooperative efforts between HEW and the Board with respect to HEW complaint investigations and compliance reviews and procedures for ensuring the effectiveness of those efforts. Additional issues relating to transportation and communication are being deferred.

Those issues have now been resolved and incorporated into a draft memorandum of understanding between HEW and the Board. That memorandum was approved in substance by the Board at its May 16 meeting and also initialed by the Director of the Office for Civil Rights of HHS, Ms. Stewart.

b. Legal issues.

The jurisdictional overlap problems were compounded by the evident disagreement between the Board's staff and the staffs of the HEW Office for Civil Rights and its General Counsel's Office on the reach of the Board's jurisdiction under the Architectural Barriers Act.

In order to have this question adequately reviewed and evaluated, the Office of Legal Counsel of the Department of Justice was asked by the Interagency Coordinating Council to prepare a legal analysis. I have received a memorandum in response to that request, and it is now under review within the Department prior to distribution to the Council members. The issues addressed in that memorandum are: (1) whether the Act extends to buildings leased by a recipient of a federal grant or loan where the recipient uses the federal funds to make rental payments, and (2) whether the act covers only those buildings for which standards for design, construction, or alteration actually have been imposed, either by statute or by regulation.

c. ANSI Standards.

At its February 14 and March 13 meetings the Council discussed what the appropriate Federal response should be to the new "American National Standard Specifications for Making

Buildings and Facilities Accessible to, and Usable by, Physically Handicapped People." The new standard specifications were then in draft form, but were subsequently published in May of this year. Until now, adherence to the previous standard specifications published by the American National Standards Institute, Inc. in 1961 and amended in 1971, or some standard which provides equivalent access, has constituted compliance with the requirements of the uniform Federal agency §504 regulations and has formed the basis for standards under the Architectural Barriers Act. The new standard is the product of a five year development and review process involving Federal agencies, organizations representing the interests of handicapped persons, architectural and engineering groups and business interests.

The new ANSI Standard is a matter of interest to the Council for several reasons. Under authority of its §504 lead-agency role HEW had recommended that Federal grant agencies provide in their §504 regulations that design, construction or alteration of facilities conform to the then existing ANSI Standard on accessibility or some alternative providing equivalent access. After the President transfers §504 coordination authority to the Justice Department, Justice must decide whether to endorse the new ANSI Standard for the

§504 agencies. Second, to the extent that the §504 lead-agency and the Board adopt different standards the potential for conflict arises as a result of their overlapping responsibilities under Title V of the Rehabilitation Act.

At the January 15 meeting of the Board, the Board declined to endorse the new ANSI Standard and approved the publication of an advance notice of proposed rulemaking to implement the Board's authority under section 502 to establish minimum guidelines and requirements for the standards issued by the four design standard-setting agencies under the ABA. Further, GSA on February 6, 1980 published a proposed new accessibility standard for nonresidential buildings. At the same time, HUD seems committed to adopting the new ANSI Standard for its §504 regulations and its Architectural Barriers Act standard.

All of these design standards may ultimately prove to be compatible, but the Council believes it appropriate to have the Federal government support a unitary standard which would achieve widespread public and industry support and would avoid the confusion and inefficiency resulting from a proliferation of standards. Beyond these practical considerations is the relevance of OMB Circular A-119 (January 17, 1980) which

provides that it is Federal policy to "rely on voluntary standards . . . with respect to Federal procurement, whenever feasible and consistent with law and regulation pursuant to law." The policy of that Circular would appear to apply equally to grant programs.

This issue was discussed at the March 13 meeting of the Council with representatives from the President's Committee on Employment of the Handicapped and the four design standard-setting agencies. As a result of that meeting, the Board committed itself to publish a proposed rule by July 1980 and a final rule by December 1980. The proposed rule will identify all modifications in the new ANSI Standard which the Board believes are necessary. The Federal agencies which now do not have an available construction standard will adopt the Board's proposed rulemaking as an interim standard while those having a fully developed standard will have the option to adopt either the Board proposed rule as an interim standard or adhere to their present standards.

d. Funding and Staffing Needs of the Board.

At the request of the Office of Management and Budget, the Council considered the serious understaffing of the Board at its December 13, 1979 meeting. At that time the Council noted that the Board had more governing members (21) than authorized staff (18). Given the import of the

Board's program and its obvious inability to carry out its numerous statutory responsibilities at the current staffing level, the Council agreed to ask OMB for appropriate relief. The fiscal recommendations of the Council were based on a recently completed staff review prepared by HEW's Office of Human Development Services which in our view fully justified the Council's request to OMB for an FY '81 budget request of \$3 million dollars, as authorized under the Rehabilitation Act Amendments of 1978 (29 U.S.C.A. 792 (i) (1979 Supp.) and the levying upon the Board's member agencies for the loan of slots for the remainder of FY '80. For the past three fiscal years, the funding for the Board has been essentially level at one million dollars, and HEW's budget had proposed no increase in that funding level for FY '81.

The second recommendation to OMB involved the role HEW had played in budget setting for the Board. The Council recommended that for future fiscal years the Board should be authorized by OMB to submit a separate line item budget, rather than having its budget submissions reviewed by HEW and made part of its budget request. In the Council's view the Board should function as a wholly independent agency. Given the Board's enforcement role under §502 of the Rehabilitation Act, the Council believes that the existing procedure resulted

in an awkward dependency for the Board.

At the direction of the Council, I wrote to Mr. McIntyre on December 28, 1979 setting out the Council's recommendations. Thereafter, OMB included in the FY '81 budget request a \$1 million dollar FY '80 supplemental appropriation which provided for 12 new permanent positions for the Board staff. For FY '81, the budget requests \$2.3 million and 32 positions for the Board. The FY '81 budget request, I understand, appears as a line item in the Department of Education budget.

The funding and staffing problems experienced by the Board in the past have apparently been remedied, at least for FY '80 and '81, and my understanding is that the Board, although now housed for administrative purposes in the Department of Education, will operate as an independent agency with no fiscal overview exercised by the Department of Education.

#### CONCLUSION

Mr. Chairman, in conclusion I want to reiterate the commitment of the Department of Justice to improving coordination among the federal entities responsible for protecting the rights of handicapped persons. To some extent such coordination between the Architectural and Transportation Barriers Compliance Board and the Interagency Coordinating Council flows inevitably from the number of agency officials who are



members of both groups. But sensitivity to the cooperative spirit in the Council's mandate, expressed in §507 of the Rehabilitation Act, requires that we extend our efforts at cooperation beyond what the mere structural arrangement dictates. We must pursue the federal government's enforcement of the statutory protections of handicapped persons with both vigor and consistency. Failure to do so will undermine in a fundamental way the goals incorporated in these laws.

This concludes my prepared statement. I will be glad to respond to any questions you may have.